Supreme Court, U. S.
FILED
JAN 3 1978
MICHAEL RODAK, JR., CLERK

77-945

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

IN THE MATTER OF THE ESTATE OF
JEANETTE VARY, DECEASED

SUSIE IVY and I. GOODMAN, COHEN,
Co-Administrators,

Petitioners,

v.

STATE OF MICHIGAN, DEPARTMENT OF
THE TREASURY, REVENUE DIVISION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

I. GOODMAN COHEN
(CHARLES E. KOVSKY, Of Counsel)
Attorney for Petitioners
211-214 Ford Building
Detroit, Michigan 48226

Interstate Brief & Record Co., Wurlitzer Bldg., 1509 Broadway, Detroit, MI 48226
962-8745 962-8746

TABLE OF CONTENTS

	Page
Index of Authorities	ii
Opinion Below	1
Jurisdiction	2
Question Presented for Review	2
Statutes Involved	3
Statement of the Case	7
Argument	
I. Accumulated Social Security Benefits In The Hands Of The Payee Or His Personal Representative Are Exempt From Any Legal Process	12
II. The State of Michigan Is Accorded No Better Position Than Any Other Creditor	21
III. Social Security Regulations Cannot Contravene The Clear Import Of 42 U.S.C. §407	27
IV. The Case At Bar Is Factually Indistinguishable From The Philpott Case	34
Conclusion	39
Relief	40

Page

Appendix A

Opinion and Order of Honorable Joseph J. Pernick, Probate Judge for the County of Wayne 41

Opinion of Honorable Blair Moody, Jr., Circuit Court Judge for the County of Wayne 44

Judgment 48

Opinion and Order of the Court of Appeals 49

Opinion of Supreme Court 54

Opinion of Supreme Court 65

INDEX OF AUTHORITIES

Cases:

Beers v. Federal Security Administrator, 172 F.2d 34 (C.A. 2, 1946) 13,14,15

Cohen v. Murphy, 330 N.E. 2d 473 (Mass., 1975) 34

Estate of Buxton, 246 Wis. 96; 16 N.W.2d 339 (1944) .. 36

Ewing v. Gardner, 88 F. Supp. 315 (S.D., Ohio) aff'd 185 F.2d 781 (C.A. 6, 1950), rev'd on other grounds 341 U.S. 321; 71 S. Ct. 684; 95 L. Ed. 968 (1951) 13,14,15,27

Ex Parte Collett, 337 U.S. 55; 69 S.Ct. 944; 93 L. Ed. 1207 (1949).....37,38

Geraldine v. Miller, 322 Mich. 85; 33 N.W.2d 672 (1948) 37

Guarino v. Celebrezze, 222 F. Supp. 345 (E.D. Pa., 1963) 28

Page

Hill v. State of Florida, ex rel. Watson, 325 U.S. 538; 65 S. Ct. 1373; 89 L. Ed. 1782 (1945) 40

In re Lewis, 287 Mich. 179; 283 N.W.. 21 (1935) 24

In re Vary Estate, 65 Mich. App. 447; 237 N.W.2d 498 (1975) aff'd 401 Mich. 340; 258 N.W.2d 11 (1977) 9,10,11,15,18

LaFarr v. LaFarr, 132 Vt. 191; 315 A.2d 235 (1974) 33,34

Massachusetts Trustees v. United States, 377 U.S. 235; 84 S. Ct. 1236; 12 L. Ed. 2d 268 (1964) 27

Philpott v. Essex County Welfare Board, 409 U.S. 413; 93 S.Ct. 590; 34 L. Ed. 2d 608 (1973) 8,9,13,14 17,22-25,29,34-37,39

Porter v. Aetna Casualty Co., 370 U.S. 159; 82 S.Ct. 1231; 8 L. Ed. 2d 407 (1962) 16,21,22,23

Segall v. Rochelle, 382 U.S. 375; 86 S. Ct. 511; 15 L. Ed. 2d 428 (1966) 38

Sola Electric Co. v. Jefferson Electric Co., 317 U.S. 173; 63 S. Ct. 172; 87 L. Ed. 165 (1942) 40

State v. Monaco, 81 N. J. Super. 448; 195 A.2d 910 (1963) 36,37

State v. Wendt, 94 Ohio App. 440; 116 N.E.2d 30 (1935) 36,37

United States v. McKesson & Robbins, Inc., 351 U.S. 305; 76 S. Ct. 937; 100 L. Ed. 1209 (1955) 37

United States v. United Mine Workers of America, 330 U.S. 258; 67 S. Ct. 677; 91 L. Ed. 884 (1947) 29,30

Page

Constitution:

United States Constitution, Art. VI, cl. 2 40

Statutes:

49 Stat. 624 as amended; 42 U.S.C. §407 ..... 3,12,13,24, 27,28,30,33,39

64 Stat. 492 as amended; 42 U.S.C. §415 16,31

68 Stat. 1081 as amended; 42 U.S.C. §421 31

68A Stat. 783 as amended; 26 U.S.C. §6331 21

70 Stat. 817 as amended; 42 U.S.C. §425 31

88 Stat. 2357; 42 U.S.C. §659 21

M.C.L.A. §330.17; M.S.A. §14.807 34,35

M.C.L.A. §330.25; M.S.A. §14.815 35

M.C.L.A. §330.27; M.S.A. §14.817 3,4,5,6,33

Page

Regulations:

20 C.F.R. 404.1601 33

20 C.F.R. 404.1604 29

20 C.F.R. 404.1605 16

20 C.F.R. 404.1606 29,32

20 C.F.R. 404.1608 29

Rulings:

Social Security Ruling 61-23 32,33

Social Security Ruling 62-12 21

Legislative History:

S. Rep. No. 628, 74th Cong., 1st Sess., 32 38

S. Rep. No. 734, 76th Cong., 1st Sess., 53 38

H. Rep. No. 615, 74th Cong., 1st Sess., 21 38

H. Rep. No. 728, 76th Cong., 1st Sess., 45 38

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

IN THE MATTER OF THE ESTATE OF
JEANETTE VARY, DECEASED

SUSIE IVY and I. GOODMAN, COHEN,
Co-Administrators,

Petitioners,

v.

STATE OF MICHIGAN, DEPARTMENT OF
THE TREASURY, REVENUE DIVISION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

OPINION BELOW

The opinion and order of the trial court exempting the social security funds from the claim of the State of Michigan was filed on June 22, 1973 and is unreported. The opinion of the circuit court, sitting as an appellate

court, affirming the decision of the trial court was filed on May 1, 1974 and is unreported. The decision of the Michigan Court of Appeals, reversing the circuit court, was rendered on November 12, 1975 and is reported at 65 Mich. App. 447; 237 N.E. 2d 498 (1975). The opinion of the Supreme Court of Michigan was rendered on October 6, 1977, affirming the Court of Appeals and is reported at 401 Mich. 340; 258 N.W. 2d 11 (1977). All opinions are attached hereto as Appendix A.

JURISDICTION

The opinion of the Supreme Court of Michigan was rendered on October 6, 1977. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

QUESTION PRESENTED FOR REVIEW

Whether a state statute, allowing the state to exact repayment from the assets of a decedent's estate for properly conferred welfare benefits, may override the immunity from legal process of social security benefits paid, provided for under 42 U.S.C. §407, in violation of the Supremacy Clause of the United States Constitution.

STATUTES INVOLVED

49 Stat. 624 as amended; 42 U.S.C. §407:

> The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

MCLA §330.27; M.S.A. §14.817:

> When such mentally diseased person has been admitted to any of the state institutions named in this act, as a patient, the commissioner of revenue or at its request the prosecuting attorney of the county in which the order for admission was made shall, if such person be possessed of any estate, or shall thereafter, while he shall remain such patient, become possessed thereof, petition the probate court of said county in his name as prosecuting attorney, stating that such person is mentally diseased and has been admitted to a state institution as a patient, and that he has good reason to believe, and does believe, that he has an

estate, and praying for the appointment of a guardian of such mentally diseased person, if one has not already been appointed, and that said estate may be subjected to the payment to the state of the expenses paid and to be paid by it on behalf of said person as a patient. The court shall thereupon issue a citation to show cause why the prayer of the petition should not be granted. If such mentally diseased person has a guardian, the citation shall be served on him. If he has no guardian, it shall be served on such mentally diseased person and also upon his father, mother, husband, wife or some one of his next of kin, if any are known and can be found. The citation shall be served at least 14 days before the day of hearing, and may be served in any part of the state, in the manner provided by the rules of the probate court. The court may appoint a guardian ad litem of such mentally diseased person. At the time of the hearing, if it appear that such mentally diseased person has an estate which ought to be subjected to the claim of the state, the court shall, without further notice, appoint a guardian of the person and estate of such mentally diseased person if he has no such guardian, and the court shall make an order requiring said guardian to appropriate and apply such estate to the payment of so much or such part thereof as may appear to be proper toward reimbursing the state for the expenses thereto incurred by it on behalf of such mentally diseased person, and such part thereof towards reimbursing the state for the future expenses which it may pay on his behalf, as may to the court appear to be just and equitable,

regard being had to the claims of persons having a moral or legal right to maintenance out of the estate of such mentally diseased person. If such guardian shall neglect or refuse to comply with such order, the court shall cite him to appear before the court at such time as it may direct, and show cause why he should not be removed, and to render an account of all money or property in his hands as such guardian, and on his continued failure to comply with said order, or to appear or render such account, the court may remove him and appoint some other suitable person in his place. As an additional remedy, the prosecuting attorney may enforce payment of the sums provided in the original order, by a proper action in the name of the state. If, in the opinion of the court, the estate of such mentally diseased person is sufficient to pay the costs of these proceedings, the guardian shall be ordered to pay the same. In all other cases a certified copy of the taxed bill of costs shall be furnished to the county treasurer. The county treasurer shall pay the same to the persons entitled thereto. The proceedings provided for by this section may be begun at any time either before or after commitment, and recovery thereunder may be had for the expenses incurred on behalf of such mentally diseased person during the entire period or periods such mentally diseased person has been a patient in said hospital, home or institution and the court may order payments to be made in the future during the confinement of said patient in the institution at the rate established by said institution and the commission in accordance with the provisions

herein. All of the remedies provided in this section may be enforced by the commissioner of revenue.

Every conveyance of any estate or interest in lands or the rents and profits thereof and the transfer of any personal property without consideration or wherein the consideration thereof was inadequate made by any person legally liable under this act for the care and maintenance of any patient during the time that he was a patient in any institution hereunder shall be void as against the state, the absence of any order of the probate court determining such liability notwithstanding.

The circuit court is hereby granted jurisdiction to set aside any such conveyances above mentioned, and may decree a lien upon the lands or property conveyed or transferred upon petition of the commissioner of revenue. Said petition may be filed with the circuit court for any county wherein the transferor resides or where the property transferred was situated. Notice of said petition and the hearing thereon shall be served on both the transferor and transferee in any county in the state by personal service or by registered mail with return receipt demanded and addressed to said persons at the last known address of said persons.

STATEMENT OF THE CASE

Jeanette Vary was committed to Northville State Hospital on or about March 22, 1967. She became a state charge on March 22, 1968, and remained such until her death on August 8, 1971. During the period of her stay at Northville State Hospital, she incurred charges in the amount of $20,084.60.

A claim was filed against her decedent estate and after objection to the claim by the estate, a referee was appointed to hear the contested claim. On March 15, 1973, Ricardo J. Lubienski, the duly appointed referee, filed his report with the Probate Court for the County of Wayne, recommending the allowance of the claim of the State of Michigan in the amount of $20,084.60 and the claim of the County of Wayne in the amount of $3,370.96. The Probate Court confirmed the recommendation of the referee and ordered the claim of the State of Michigan and the County of Wayne paid.

The estate, through its co-administrators, filed a Petition for Determination of Rights with the Probate Court in which they sought to have accumulated social security benefits in the amount of $5,547.39 excluded as assets to be used in the satisfaction of the state and county claims. During the entire period of the guardianship of the decedent neither the County of Wayne nor the State of Michigan billed the guardians for the care of the deceased during her period of

commitment. All cash that remained in the hands of the co-fiduciaries were identifiable Social Security benefits. The estate relied upon section 207 of the Social Security Act, 42 U.S.C. §407 and the case of *Philpott v. Essex County Welfare Board*, 409 U.S. 413; 93 S. Ct. 590; 34 L. Ed. 2d 608 (1973).

On June 22, 1973, the Honorable Joseph J. Pernick, Judge of Probate for the County of Wayne, issued an opinion and order wherein he held:

> There can be no question after reading the Philpott case that past, present, or future payments of Social Security benefits are not subject to "execution, levy, attachment, garnishment, or other legal process. . ." Therefore, this Court Does Determine and Order that the portion of the estate's assets that are cash on hand from Social Security benefits are not subject to the claim of the State of Michigan nor the County of Wayne.

The State of Michigan appealed the determination of the Probate Court to the Wayne County Circuit Court arguing that the Probate Court misapplied the decision of the United States Supreme Court in the *Philpott* case. In an opinion dated May 1, 1974, the Honorable Blair Moody, Jr. rendered an opinion affirming the decision of the Probate Court. The Judge stated:

> [T]this Court concludes that the Federal Statute is all inclusive and under the doctrine of supremacy precludes any possible State restriction.

> The fact that this case involves the estate of a deceased, whereas in Philpott the question involved an individual still living, is a difference without significance in view of the broad language of the Federal Act. It speaks of "monies paid or payable" irrespective of the recipient. Such broad language did allow no differentiation as to whether the eventual recipient was then alive or deceased.

Thereafter, by leave granted, the State of Michigan appealed to the Michigan Court of Appeals. The Court stated the issue as follows:

> Thus the sole decisional issue is whether section 207 of the social security act prohibits the use of social security benefits for the payment of accrued claims against the estate of the beneficiary after the beneficiary's death. 65 Mich. App. 447, 450-51; 237 N.W. 2d 498, 500 (1975).

In a 2-1 decision the Court held that "although the social security benefits retain their distinctive character in a traceable account, once they pass to the estate of the recipient they lose that characteristic." 65 Mich. App. 447, 452; 237 N.W. 2d 409, 501. The Court, therefore, concluded:

> [T]he social security funds remaining constructively in the decedent's hand at the time of death are a general asset of the estate. As such the funds are available to pay proper administration expenses and may be reached by creditors who have timely filed claims with the probate court. * * * This is in accord with the

> underlying principles of §207 of the Social Security Act, since the purpose of this section is to protect the recipient, not the heirs of the recipient. * * * 65 Mich. App. 447, 453; 237 N.W. 2d 498, 501. (citations omitted)

In a dissenting opinion Presiding Judge Bronson adopted the opinion of the Circuit Court and quoted that portion of the lower court's opinion set forth above (second paragraph only). 65 Mich. 447, 453-454; 237 N.W. 2d 498, 501.

Subsequently, the co-administrators sought and obtained leave to appeal to the Supreme Court of Michigan. 397 Mich. 813; _____ N.W. 2d _____ (1976). In its opinion, 401 Mich. 340; 258 N.W. 2d 11 (1977), the Court *assumed* that the exemption bestowed by section 207 is personal to the recipient. The Court, therefore, phrased the issue as follows:

> The basic question is whether the *personal* character of social security payments ends at the death of the person for whose care and maintenance they are made or whether the payments retain the same protected character. 401 Mich. 340, 345; 258 N.W. 2d. 11, 13. (emphasis supplied)

A subsidiary issue was also addressed:

> Inherent is the question of whether there is a conflict between Federal social security legislation and state legislation regarding estates of decedents. *Ibid.*

The Court would not create a conflict between state and federal law if one could be avoided. The Court, therefore, construed the exemption of section 207 as being personal in nature in order to harmonize the state statute allowing the State of Michigan to satisfy its claim out of the assets of a decedent's estate with the federal statute. The Court concluded:

> Social security is imbued with a personal characteristic which dies with the beneficiary. Thereafter, if any funds pass into an estate for probate as did Jeannette Vary's, they are subjected to state law.
>
> We would not create a conflict where there is none. 401 Mich. 340, 353; 258 N.W. 2d 11, 16.

Justice Levin in a dissenting opinion argued that there was no intent expressed by Congress to terminate the exemption upon the recipient's death. The accumulated funds should be available for the continuing needs or sustenance of those who survive the recipient. The Justice also opined that the essence of the federal exemption was the creation of a conflict between the federal law establishing the exemption and state law allowing persons to assign their property and creditors to proceed against a debtor's property. "In enacting this exemption Congress necessarily created conflict between federal and state law." 401 Mich. 340, 358; 258 N.W. 2d 11, 19.

From this opinion, Petitioners seek a writ of certiorari.

ARGUMENT

I.

ACCUMULATED SOCIAL SECURITY BENEFITS IN THE HANDS OF THE PAYEE OR HIS PERSONAL REPRESENTATIVE ARE EXEMPT FROM ANY LEGAL PROCESS.

The federal statute involved in the appeal below and the one concerning this petition for writ of certiorari is section 207 of the Social Security Act, 49 Stat. 624 as amended, 42 USC §407, which provides:

> The right of any person to any future payment under this subchapter shall not be transferrable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

The Supreme Court of Michigan held that the above statute is inapplicable upon the death of the beneficiary to payments accumulated by the beneficiary or her guardians in her behalf. The Court opined that the purpose of the social security legislation was to protect its recipients from the hardships of existence. The Court interpreted the federal statute as creating a personal exemption. Therefore, upon the death of Jeannette Vary there was no use to which the funds could be put which would have lessened that hardship and the personal protection of the statute died with the beneficiary.

The Court relied on the case of *Beers v. Federal Security Administrator*, 172 F.2d 34 (CA 2, 1946) and *Ewing v. Gardner*, 88 F. Supp. 315 (S.D. Ohio) *aff'd* 185 F. 2d 781 (CA 6, 1950) *rev'd* on other grounds 341 U.S. 321; 71 S. Ct. 684; 95 L. Ed. 968 (1951) as supporting the contention that the statutory exemption does not apply once the beneficiary has died. The Court did not consider the case of *Philpott v. Essex County Welfare Board*, 409 U.S. 413; 93 S. Ct. 590; 34 L. Ed. 2d 608 (1973) as affecting the holdings of *Beers* or *Ewing*.

In *Beers v. Federal Security Administrator, supra*, the Court interpreted section 207 in relation to an alleged overpayment of benefits:

> [I]t does not, in our opinion, relate to checks issued for past installments. If it did, the payee of the check would be unable to negotiate it by endorsement, which concededly he can. We think the section is intended to preclude a person entitled to benefits under sections 401 to 409 from transferring his right before, but not after, the Administrator has recognized it. Hence, checks issued to him pursuant to certification are freely transferrable by him, and on his death, pass by operation of law to his executor or administrator. 172 F. 2d 34, 36.

To the same effect is *Ewing v. Gardner, supra*, "Section 201 of the Act, section 407, title 42 U.S.C.A. prohibiting the assignment of any future payment is not applicable to the present case which deals with accrued payments." 185 F.2d 781, 784. It can readily be seen by both Courts' analyses that no effect is given to the

provision in the statute on the exemption conferred to "moneys paid." However, the same statute also clearly and unambiguously provides that "none of the moneys paid . . . shall be subject to execution, levy, attachment, garnishment, or other legal process."

The United States Supreme Court in *Philpott v. Essex County Welfare Board*, 409 U.S. 413; 93 S. Ct. 590; 34 L. Ed. 2d 608 (1973), held that this statutory provision is all-inclusive. 409 U.S. 413, 415; 34 L. Ed. 2d 608, 611. Thus, *Ewing v. Gardner* and *Beers v. Federal Security Administrator* must be re-examined in light of this decision. The Court in *Philpott* was confronted with accumulated funds held in a bank account on behalf of the beneficiary, just at the case now before the Court involves an accumulation of funds in a bank account on behalf of Jeannette Vary. Thus, the same result should necessarily follow — the accumulated funds are exempt.

It should be noted that both the respondent and the State of New Jersey as amicus curiae in *Philpott* cited *Beers* in their briefs for the proposition that section 207 was not intended to be an absolute bar to any recovery out of social security benefits.[1] Yet, the Supreme Court responded with the following: "The moneys paid as retroactive benefits were 'moneys paid . . . under this

---

[1] The respondent argued that, "an absolute bar against attachment of the retroactive benefits should not be assumed if the result does not comport with the purposes and policies of the Social Security Act." Brief for the Respondent, Essex County Welfare Board, p. 3. Respondent conceded that if section 207 of the act were applied literally the Welfare Board would be barred from recovery.

subchapter'; and the suit brought was an attempt to subject the money to 'levy, attachment . . . or other legal process.' " 409 U.S. 413, 415-416; 34 L. Ed. 2d 608, 611 And further in the opinion, "The protection afforded by Section 407 is the 'moneys paid' . . ." 409 U.S. 413, 416; 34 L. Ed. 2d 608, 611. It may, therefore, be assumed that the Supreme Court was abandoning the rationale of *Beers*, *Ewing*, and their progeny.

The Michigan Courts developed their thesis on the grounds that the social security benefits lost their characteristic upon the death of the recipient. The factors militating toward this result were that the accumulated funds could have at any time become necessary for the current needs of the beneficiary. Upon the death and subsequent burial of Jeanette Vary, there were no further current needs to be satisfied.

The United States Supreme Court, however, carved out no exception to section 207. On the contrary, the Court gave this statutory provision a literal interpretation. 409 U.S. 413, 415; 34 L. Ed. 2d 608, 611. The statute speaks of "monies paid or payable irrespective of the recipient. Such broad language did allow no differentiation as to whether the eventual recipient was then alive or deceased." *In re Vary Estate*, 65 Mich. App. 447, 454; 237 N.W. 2d 498, 501 (1975) (Bronson, P.J., dissenting).

This interpretation given by the Supreme Court fits the statutory scheme. All payments made pursuant to the various provisions of the Social Security Act are not

solely for the care, support, and maintenance of the beneficiary. The regulations contemplate the situation where an excess of funds would accumulate. In those instances the payees are to invest the funds in selected assets. 20 C.F.R. 404.1605. Even so, as long as the investments retain the quality of money, *Porter v. Aetna Casualty Co.*, 370 U.S. 159; 82 S. Ct. 1231; 8 L. Ed. 2d 407 (1962), they are secure from the claims of creditors.

Social Security benefits provide for more than the bare essentials of life; otherwise, in no instance would there ever be an accumulation of benefits. Every benefit check would, by definition, fill the void created by the hardships of existence. The payments represent not only earned rights but also outright grants. A donative intent by Congress is evidenced by the fact that accumulations of benefits do occur, which are neither subject to recoupment by the administrator nor subject to legal process by creditors, and by the fact that the Act provides for minimum payments regardless of need. 64 Stat. 492, as amended, 42 U.S.C. §415.

There can be no argument that creditors could not have reached the accumulated funds during Mrs. Vary's lifetime. Furthermore, a creditor could not in any way have prevented the recipient from giving away the money received or even squandering it on trifles.

In the instant case had the payees elected to spend all the money on the beneficiary beyond the necessaries of life without paying the customary charges of the hospital, there would be absolutely nothing the State of Michigan could have done by legal process to prevent it. The State possibly could have had the payees removed or sought to have had Jeanette Vary's indigency

redetermined. The State, however, could not have successfully sued for reimbursement. Thus, the present claim of the State of Michigan depends for its efficacy upon the fortuitous circumstance that the beneficiary died before disposing of her exempted funds.

Furthermore, social security payments sustain not only the recipient but also his or her dependents as well. The Act provides for additional allowances for the recipient's spouse and children. Checks may be issued in the name of the principal alone or separately to each dependent. This allocation of benefits, however, should not be construed as creating separate funds with the exemption pertaining to each ceasing upon the death of the principal beneficiary, so that creditors may enforce their claims in preference of the surviving beneficiaries.

There may also be dependents of the recipient who do not qualify the recipient to a greater allowance but are nevertheless in need of support. These persons may in fact be dependent upon the social security benefits. Thus, the exemption necessarily protects both the recipient and his dependents.

The Michigan Supreme Court reasoned that if Congress had intended to exempt benefits such as those paid to Mrs. Vary from legal process it would have said so or would have used different wording. Further, the Court construed *Philpott* as limited to instances where the beneficiary is living and not dead because such benefits are strictly for the support of living people with continuing needs.

The Michigan Supreme Court read *Philpott* as not extending the legislative objective to the funds of a deceased recipient. However, the Court is adopting a

limitation nowhere found in the Social Security Act and one that is at odds with its general purpose. There is as much reason to believe that Congress intended that accumulation of benefits, accumulated through the frugality of the recipient, would be available for the continuing needs of the survivors of the recipient as there is to believe Congress intended that those accumulations be used to pay the claims of creditors.

The Michigan Court of Appeals recognized that in another situation a dependent of a social security recipient might have need for the funds. The Court stated, "[T]here is nothing in the record to indicate that these funds will assist anyone dependent on the decedent for their support in meeting the bare necessities of life." 65 Mich. App. 447, 452; 237 N.W. 2d 498, 500 (1975). The absence of dependents in the instant case conveniently permits the Michigan Supreme Court to draw the line when the exemption ends — upon the death of the recipient. Having determined the exemption to be personal (although restricting the definition to the living person and not the extended persona of the probate estate) it is difficult to rationalize why dependent spouses, parents, children, and other heirs should have priority over the claims of creditors.

Having pierced the shield of the exemption, the Court has opened a whole avenue of attack for creditors. If the exemption is personal, for the care and maintenance of the recipient, creditors may seek to question and have set aside dispositions of funds during the lifetime of the beneficiary on the grounds that the disposition is incompatible with the purpose of the exemption.

The Court went on to state that under petitioners' interpretation credit to the living beneficiary would be adversely affected. Creditors would not extend credit if they could not expect that accumulated social security funds could be used to satisfy their debts. Problems would also arise with commingling of funds and payment of taxes and other lawful debts.

This rationale makes three assumptions which are not valid. First, it assumes that debtors accumulate social security payments; secondly, that the accumulations will not be expended during the recipients' lifetime; and thirdly, that creditors are willing to wait until some indeterminate time in the future to ascertain what, if any, funds would be available upon the recipient's death to pay their claims. There is, however, absolutely no reason to hypothesize that credit is extended on such a tenuous basis. Also, the feared commingling of exempt and non-exempt funds can and does occur during the lifetime of the recipient and thus creates no greater difficulty of tracing with the advent of death.

Concededly, the exemption must terminate at some point. But, it is just as logical and reaonable to allow the exemption to carry through the probating of the estate as it is to cut off the exemption upon the death of the recipient. Through the frugality of the living beneficiary, he should be able to leave a legacy to the natural objects of his bounty. Once having passed out of the estate the moneys simply become general assets of the heir or legatee for the nexus between the funds, and the social security exemption would have been broken.

Congress has decreed that all moneys paid be clothed with an immunity and that they be alienable by the beneficiary upon receipt as he pleases. A representative payee is more limited in his methods of disposing of benefits only because it is not known how the beneficiary himself would have spent the money. However, the character of the funds should not change simply because the Social Security Administration has determined by regulations that the beneficiary himself would have in every instance paid for his own care, support, and maintenance. Thus, the payments should be construed as inuring to the benefit of the recipient directly by providing for his care, custody, and maintenance; and indirectly, by allowing the beneficiary to leave behind him something for his heirs or legatees.

Allowing a creditor to reach these funds would be to discourage frugality on the part of the beneficiary or his representative payee. The Michigan Supreme Court's construction encourages well-advised debtors to make inter vivos donative transactions to protect accumulated benefits from the claims of creditors. Indeed, in this case it would have been in the best interest of the beneficiary for the payees to have made inter vivos gifts of the money to the heirs of Jeanette Vary to preserve the fund against the claims of the State. (Under the circumstances this course of action was not possible.)

However, if a competent beneficiary intends to make an inter vivos gift of accumulated benefits, the transfer is in no manner subject to restraint or rescission by creditors. Conceivably, the beneficary could transfer by inter vivos gift his entire estate consisting of accumulated payments and thereby defeat all claims of creditors against his decedent's estate. It is possible for a recipient

to create an inter vivos trust whereby the recipient enjoys a life estate with the remainder going to whomever the recipient selects. No creditor of the recipient could reach the interest of any of the persons involved in the transaction. A distinction, therefore, should not be made between the right of a living beneficiary to dispose of his benefits in derogation of the claims of creditors and the right of a deceased beneficiary to do likewise either under the laws of testacy or intestacy.

When exceptions to section 207 are to be made, Congress has explicitly stated them. One exception is that social security benefits are subject to the authority given to the Secretary of the Treasury to make levies or seizures for the collection of delinquent federal taxes. 68 A Stat. 783 as amended; 26 U.S.C. §6331; *see* Soc. Sec. Rul. 62-12. A second exemption enacted by Congress allows spouses and children to reach social security benefits for the payment of alimony and child support. 88 Stat. 2357; 42 U.S.C. §659.

There being no other exceptions to the bar presented by section 207, the moneys paid to Jeanette Vary are necessarily exempt from all legal process.

II.

The State of Michigan Is Accorded No Better Position Than Any Other Creditor

The applicable test to ascertain whether or not the benefits paid to the personal representatives of Jeanette Vary are still Social Security benefits, and hence exempt from legal process, is whether such payments retained the quality of moneys. *Porter v. Aetna Casualty Company, supra.* The funds in the instant case were

subject to the demand and use of the beneficiary as the needs for support and maintenance required. 370 U.S. 159, 161; 8 L. Ed. 2d 407, 409.

The *Philpott* Court recognized the analogy to veteran benefits in the context of social security benefits. 409 U.S. 413, 416, 34 L. Ed. 2d 608, 611. The funds retain the quality of moneys until they become a permanent investment. *Ibid.* The Supreme Court, however, glossed over the point made by the *Porter* decision, i.e., the needs of the veteran for support and maintenance.

In *Philpott* the Social Security benefits were not for the present needs of the beneficiary, Wilkes. Indeed, the suit was brought by the Essex County Welfare Board for that very reason — since the present needs of Wilkes were satisfied by the retroactive Social Security payments, the welfare payments provided by the county represented duplicate payments.[2] The test the Supreme Court applied

---

[2] The respondent in the *Philpott* case contended that allowing Wilkes to receive both the Social Security payments and the welfare assistance payments would not serve the purposes of the Social Security Act. Brief for the Respondent, Essex County Welfare Board, p. 4. "[I]f a literal reading of the statute supports such a course of action, the statute should then be construed, in such exceptional situations, to prevent duplication of benefits." Ibid. Respondent cited as authority a line of veteran cases all of which excluded governmental agencies from the classification of creditors. Brief, pp. 4-5.

> "The county welfare board then brought this proceeding to recover the amount by which Wilkes' welfare benefits would have been reduced if the Social Security Administrator had approved his application in the timely fashion, so that the total benefits would not turn on the fortuitous circumstance of when the federal agency acted."

Brief for the State of New Jersey As Amicus Curiae, p. 9.

was broader in scope and vastly more liberal than enunciated in *Porter* while arriving at a similar conclusion in exempting the funds.

> In the present case, as in Porter, the funds on deposit were readily withdrawable and retained the quality of "moneys" within the purview of Section 407, 409 U.S. 413, 416; 34 L. Ed. 2d 608, 611.

Further analogies to decisions involving veterans were cut off by the Court. The Supreme Court of New Jersey in its decision, 59 N.J. 75, 85; 279 A.2d 806, 812, had referred to cases wherein the State was not treated as a creditor within the ambit of U.S.C. §3101 (exempting veteran benefits from creditors), and therefore, able to obtain funds, otherwise exempt, from the veteran.[3] The United States Supreme Court responded to this contention by stating:

> But section 407 does not refer to any "claim of creditors"; it imposes a broad bar against the use of any legal process to reach all social security

---

[3] The respondent and the State of New Jersey both were in agreement with the rationale of the New Jersey supreme court that a welfare agency assumes a relationship with a recipient different from an ordinary creditor-debtor relationship. Brief For The Respondent, Essex County Welfare Board, pp. 4-5; Brief For The State of New Jersey As Amicus Curiae, p. 11.

Contrarily, the petitioner and the United States both argued that the veteran cases were irrelevant. Brief For Petitioners, p. 7.

> "Those decisions seem irrelevant to the issue in this case. Unlike 38 U.S.C. 3101, the statutory provision involved here (Section 207) does not refer to "claim of creditors" but rather imposes a broad bar against the use of any legal process to reach social security benefits." Brief For The United States As Amicus Curiae, p. 16.

benefits. That is broad enough to include all claimants, including a state. 409 U.S. 413, 416-417; 34 L. Ed. 2d 608, 611-612.

The Essex County Welfare Board contended that the State or its agencies are not in the same class of creditors as all others (citing *In re Lewis*, 287 Mich. 179; 283 N.W. 21 (1935), *inter alia*)[4], and, therefore, not precluded from reaching social security benefits. The State of New Jersey as amicus curiae, likewise argued for a classification other than an ordinary creditor-debtor relationship.[5]

In *Lewis*, the court stated, ". . .we do not think that, under the circumstances, Congress intended to consider the State in the class of barred creditors." 287 Mich. 179, 198; 283 N.W. 21, 24. While the United States Supreme Court has not overruled this decision, it has expressly held that the rationale does not apply to Social Security benefits and the exemption granted them. The differences in language of 42 U.S.C. §407 and 38 U.S.C. §3101 dictate a different result. 409 U.S. 413, 416-417; 34 L. Ed. 2d 608, 611-612.

It is submitted that the need of the recipient is not the pivotal issue when social security benefits are involved. A narrow reading of *Philpott* (and the one advocated by Respondent) would place a governmental agency on par with all other creditors only when it is performing a

---

[4] See fn. 2 and 3 *supra*.

[5] Id.

statutory duty to care for the needy, with needy being defined as an indigent receiving welfare benefits. Granted this interpretation finds support by language of the Court wherein they state:

> We see no reason why a State, performing its statutory duty to take care of the needy, should be in a preferred position as compared with any other creditor. 409 U.S. 413, 416; 34 L. Ed. 2d 608, 611.

However, such an interpretation does not afford due weight to the statute involved and other parts of the opinion. For instance, the Court was very explicit on the scope of the statute and the relationship of the statute to the actions of the welfare board. "On its face, the Social Security Act in Section 407 bars the State of New Jersey from reaching the federal disability payments paid to Wilkes. The language is all inclusive." 409 U.S. 413, 416; 34 L. Ed. 2d 608, 611. At this point the argument of respondent was defeated; the Court need not have spoken further. The statute on its face precluded legal process by the welfare board. But to respond to the contention of an implied exception raised by the briefs of respondent and amicus curiae[8], the Court went ahead to state, as pointed out above, that the State occupies a position as any other creditor. However, the essential point being made is that the legislature intended all "moneys paid" to be exempt. This central theme runs throughout the opinion and is cogently summed up in the last paragraph dealing with the issue.

---

[8] Id.

> But Section 407 does not refer to any "claim of creditors", it imposes a broad bar against the use of any legal process to reach all social security benefits. 409 U.S. 413, 416-417; 34 L. Ed. 2d 608, 611-612.

Petitioners contend that the proper reading of *Philpott* is presented in this last paragraph.

A somewhat more limited interpretation would be that a governmental agency is an ordinary creditor, i.e., within the purview of section 207 whenever it is performing any statutory duty of caring for its citizenry. However, this interpretation and the one proffered by the respondent are inconsistent with the provisions of the statute (exempting all benefits). Yet, under any one of the three views presented, the funds paid to Jeanette Vary would be exempt from legal process. They were moneys paid to a needy person who was being cared for by the State of Michigan pursuant to a statutory obligation.

The Michigan Supreme Court did not adopt the argument of Respondent directly. Instead the Court held the exemption to be inoperative commencing on the death of the beneficiary and therefore the State may at that time become a creditor able to subject the social security benefits to legal process. The Court would not create a conflict where purportedly none exists. Thus, while the interpretation of the Michigan courts eliminates any conflict between state and federal law, it also destroys the immunity granted by Congress.

However, as noted by Justice Levin in his dissenting opinion:

Stating the issue in terms of conflict between federal and state law suggests that such conflict is to be avoided. It is, however, the essence of such an exemption to create conflict between the federal law establishing the exemption and state law allowing persons to assign their property and creditors to proceed against a debtor's property. In enacting this exemption Congress necessarily created conflict between federal and state law. 401 Mich. 340, 358; 258 N.W. 2d 11, 19 (1977) (Levin, dissenting).

III.

Social Security Regulations Cannot Contravene The Clear Import of 42 U.S.C. §407

The regulations of the Social Security Administration cannot be at variance with a statute which exempts benefits from legal process. It is the regulations which must be read in light of the statute and not vice versa as the Respondent argued to the Michigan Courts. Interpretive aids, such as administrative constructions, cannot overcome clear statutory requirements. *Massachusetts Trustees v. United States*, 377 U.S. 235, 242; 84 S. Ct. 1236; 12 L. Ed. 2d 268, 274 (1964).

In *Ewing v. Gardner*, 88 F. Supp. 315 (S.D. Ohio), aff'd 185 F. 2d 781 (CA 6, 1950), rev'd on other grounds 341 U.S. 321; 71 S. Ct. 684; 95 L. Ed. 968 (1951), the administrative regulations called for the dismissal of a

claim for benefits if evidence of age was not submitted within one year. The trial court held:

> Regulations . . . may not expand or extend the provisions of a statute or add to the conditions of a right a condition not stated therein.
>
> Where . . . the statute imposes no sanctions or penalties for failure to comply therewith, such administrative agency may not provide that failure to comply with its regulations will result in the loss of rights conferred by statute. 88 F. Supp. 315, 322.

The trial court went on to hold the regulation invalid. On appeal, however, the Court stated that the regulation was not necessarily invalid. It could only be valid when harmonized with the statute which did not provide for forfeiture to prosecute a claim with diligence. 185 F. 2d 781, 784. *See also Guarino v. Celebrezze*, 222 F. Supp. 345 (E.D. Pa., 1963).[7]

In the case at bar, the statute confers an absolute right on the beneficiary to hold the benefits free from any legal process. The regulations cited by Respondent must be read in conjunction with 42 U.S.C. §407. It is conceded that the purpose expressed by these provisions is for the care, maintenance, and support of the beneficiary. However, since the overriding mandate of 42 U.S.C. §407 is to exempt moneys paid, the regulations, therefore, must be addressed to voluntary transfers by the personal representative of the beneficiary.

---

[7] "The regulations of the administration regarding procedures for adjustment of errors are not powers to make law and amend the statute by regulations." *Id.* at 348.

Putting aside for the moment the interpretation of the regulations when properly construed in light of the statute, nowhere in the regulations is it mandatory for the representative payee to pay over funds to an institution housing the beneficiary. The representative payee merely "shall give highest priority to expenditures of the payments for the current maintenance needs of the beneficiary." 20 C.F.R. 404.1606. Further, the regulations only restrict payments for indebtedness until "current and reasonably foreseeable needs of the beneficiary are otherwise provided for." 20 C.F.R. 404.1608. In the instant case the Social Security benefits were accumulated by the guardians of the beneficiary. At all times during the accumulation of these funds, the maintenance and support of the beneficiary was being provided, albeit by the State which was not being reimbursed. The guardians, moreover, did not satisfy any debts out of the benefits in preference to the State of Michigan. Even if the guardians had done so, such payments would not have violated 20 C.F.R. 404.1608 as "the current and reasonably foreseeable needs of the beneficiary [were] otherwise provided for."

The Michigan Supreme Court cited as authority an opinion letter of the Director of the Social Security Administration. Mr. McKenna's letter is merely a reformulation of 20 C.F.R. 404.1604; 404.1606; and 404.1608, which do not require a different result from that achieved in *Philpott*. The Director goes on to give his interpretation of *Philpott* and section 207, which should be accorded no greater weight than the interpretation of anyone else versed in the law.

In *United States v. United Mine Workers of America*, 330 U.S. 258; 67 S. Ct. 677; 91 L. Ed. 884 (1947), the

Court rejected as authoritative opinions concerning the Norris-LaGuardia Act from senators who were not involved with writing the Act (and some of whom were not even members of the Senate at the time of passge.) The Court stated, "We fail to see how the remarks of these Senators in 1943 can serve to change the legislative intent of Congress expressed in 1932. . ." 330 U.S. 358, 282; 91 L. Ed. 884, 907. While it is true the Director is in charge of the administration of the law, he did not promulgate the regulations, nor was he involved with the enactment of the statute from which source the regulations derive their efficacy. (Compare the 39 year difference between the passage of 42 U.S.C. §407 and Mr. McKenna's opinion and the 11 year discrepancy in *United States v. United Mine Workers of America, supra.*)[8]

---

[8] A contrasting opinion letter was submitted by the petitioner in *Philpott* in arguing that section 207 posed an absolute bar to any legal process. The author of the letter is Wilbur J. Cohen, Dean of the School of Education at the University of Michigan. Mr. Cohen was a member of the President's Committee on Economic Security during the years 1934 and 1935. The committee was responsible for following the legislative activity of the Social Security Act through Congress. He stated the following:

> It was generally understood, without any exception that the idea of making a payment under the social security program would be a statutory right, and payment would not be subject to any other legal process whatsoever, except as provided specifically in the law.
>
> There is absolutely no question in my mind that the Congress intended the exemption of attachment in social security to be unqualified and absolute. Brief For Petitioners, App. "A", pp. 1a, 2a.

The carefully written letter from the Director does not address itself to the issue before the Court. "The question is not whether the guardians might properly have used ("should" have used) the accumulated funds to reimburse the state but whether they *must* use the funds to pay this debt." 401 Mich. 340, 356; 258 N.W. 2d 11, 18 (1977) (Levin, dissenting; emphasis in the originai).

In addition, Respondent asserted that the Administrator would be entitled to demand repayment of the accumulated amounts. However, disability payments are established by the State of Michigan, 68 Stat. 1081 as amended, 42 U.S.C. §421, and the Secretary or his designate is only authorized to cease payments when the disability has ceased. 70 Stat. 817 as amended; 42 U.S.C. §415. Besides, the Act provides for minimum payments regardless of the amount needed for care, support, and maintenance. 64 Stat. 492 as amended; 42 U.S.C. §415. Hence, there is no overpayment in the instant case. Even Respondent's authority, Mr. McKenna, disagreed with Respondent on this point.

> [T]he Social Security Administration has no jurisdiction over, or legal interest in, a claim against accumulated social security benefits, whether by a public or private creditor, for reimbursal of funds from a decedent's estate, whether the funds were provided by the creditor for the beneficiary's support or for anything else. Respondent's Brief in the Supreme Court of Michigan, Exhibit A, p. 35.

The remedy for the failure of the representative payees to make a voluntary payment is not by legal process

against the fund. Concededly, payment to Northville State Hospital would have been proper, as the regulations provide that payment for the customary charges of a state institution is a proper use of benefits. 20 C.F.R. 404.1606. However, refusal to do so does not subject the funds to legal process. In Social Security Ruling 61-23 the Administrator ruled that unless the representative payee reconsidered his refusal to pay the monthly charges established by the State for the hospitalization, care and maintenance of the institutionalized, mentally incompetent beneficiary, he would be discontinued as the payee.

In that case the state had made a demand, while the benefits were being paid, for the monthly charges plus an additional amount each month for the beneficiary's use in making purchases at the hospital canteen. The payee refused to honor the request on the grounds that he intended to save the benefits until he had accumulated a fund of $2000.00 to be used for the beneficiary's funeral expenses.

The Administrator recognized the accumulation for reasonable burial expenses as a legitimate use of benefits as long as the current needs were being met. However, such was not the case. The hospital was conditioning the stay of the beneficiary on the payment of the monthly charges. Yet, the only remedy offered in the ruling was the removal of the payee; not legal process, as is being attempted in the instant case.

The remedy in the case at bar could have been to replace the representative payees if it could be shown that they were not providing for "current maintenance", acting contrary to the "best interests of the beneficiary", or were discharging indebtedness of the beneficiary

before the needs of the beneficiary were provided for. Based on Soc Sec Rul 61-23, it is likely that a successor payee, who would have voluntarily transferred funds to Northville State Hospital, could have been appointed. The hospital itself could even have been appointed the representative payee. 20 C.F.R. 404.1601. Or, the state could have conditioned the stay in the hospital of Jeanette Vary upon a voluntary transfer by the payees as the moneys were paid them.

This latter procedure would not have involved any legal process, only the administrative imposition of a condition precedent to remaining a patient at Northville State Hospital. Such a condition would be aligned with both state and federal laws. The state statute requiring reimbursement from the estate of the patient, M.C.L.A. §330.27; M.S.A. §14.817, would have been satisfied. From a federal standpoint, no right to receive future payments would have been transferred or assigned, and the moneys paid would not have been subjected to legal process. 42 U.S.C. §407. In the event the representative payees had neglected or refused to make a voluntary transfer of funds, the State had recourse to the Probate Court by petitioning the Court for a redetermination of indigency, and in that manner, establish that Jeanette Vary was not entitled to be a state charge.

In *LaFarr v. LaFarr*, 132 Vt. 191, 315 A. 2d 235 (1974), a divorce proceeding, the husband argued that although he received $160.00 per month from the railroad retirement fund because of his minor children, the act did not require that sum to be spent for child support. In addition, appellant opined that such sums were inalienable under 45 U.S.C. §2281 (similar to 42 U.S.C. §407) and

the *Philpott* decision. 132 Vt. 191, 194; 315 A.2d 235, 236. The Court held that the support order did not specify the fund from which the order was to be satisfied, but merely directed that the appellant pay $160.00 per month. *Ibid; accord Cohen v. Murphy*, 330 N.E. 2d 473 (Mass., 1975).

In the same vein the Probate Court could have ordered Jeanette Vary to be admitted to Northville State Hospital as a full or partially paying patient. M.C.L.A. §330.17 M.S.A. §14.807. Such action, however, was foreclosed on the death of the beneficiary.

IV.

The Case At Bar Is Factually Indistinguishable From the *Philpott* Case

In *Philpott* Essex County was attempting to reach funds which had accrued but were unpaid to Wilkes, the beneficiary. When the money was presented to Wilkes, he deposited it in a bank account. These funds, which were not paid until 1968, represented accrued benefits covering the period May, 1966 into the summer of 1968. 409 U.S. 413, 414; 34 L. Ed. 2d 608, 610. In the present case the social security funds were deposited in a bank account for a similar period of time. In both instances the funds on deposit are an accumulation of benefits.

Respondent, however, attempted to distinguish the funds in *Philpott*, current deposits, from the accumulated benefits in the instant case. But, there is no distinction to be made here; it is purely a matter of semantics. Respondent's seeming distinction is grounded on a characterization of the funds brought about by the timing of the state's action. In *Philpott* the funds are current

deposits as Respondent termed them merely because Essex County sued to reach the bank account immediately upon receipt of the money by Wilkes. On the other hand, the funds held for Jeanette Vary are accumulated benefits, but only because the State of Michigan did not attempt to reach them until after the beneficiary had died. Even under Respondent's characterization a certain portion of the bank deposit held for Jeanette Vary must be current deposits as they were received contemporaneously with her death. Regardless of the nomenclature Respondent chooses, the funds in both cases are identical — accumulated benefits.

Respondent further attempted to distinguish *Philpott* on the basis that the State of Michigan was not performing its "statutory duty to take care of the needy" when it provided at public expense for the care and support of Jeanette Vary. However, under M.C.L.A. §330.25; M.S.A. §14.815 the State of Michigan is under a statutory duty to care for the mentally ill, "except as herein otherwise provided." The exception is provided by M.C.L.A. §330.17; M.S.A. §14.807 which classifies patients according to need. Jeanette Vary was committed as a first class patient, i.e., a person "kept and maintained at the expense of the state." Thus, there being no exception, the State of Michigan was performing its statutory duty to care for the needy, just as the State of New Jersey had performed its statutory duty in *Philpott*. The only real distinction is in the specific area that obligation resided — welfare versus mental illness — which should carry with it no legal effect.

The funds paid to Jeanette Vary represent duplicity of payments as much as the funds paid to Wilkes did. If Wilkes had timely received his social security payment,

Essex County would have reduced its welfare payment to him on a dollar for dollar basis.[9] In the instant case, if the guardians of Jeanette Vary had paid over the social security benefits to the state hospital, the cost to the state would have been reduced on a dollar for dollar basis in the care and maintenance of the beneficiary. In essence then the situation before this Court is indistinguishable from that presented in *Philpott*.

In a final attempt to distinguish *Philpott*, Respondent asserted that the death of the recipient changes the exempt status of the funds while at the same time conceding that the funds are legally characterized as social security benefits. It was upon this approach to the funds that the Michigan Supreme Court and the Court of Appeals bottomed their decisions. For supporting authority the Court of Appeals (in an opinion cited with approval by the Michigan Supreme Court) harked back to a pair of veteran cases, *State v. Monaco*, 81 N.J. Super. 448; 195 A.2d 910 (1963) and *State v. Wendt*, 94 Ohio App. 440; 116 N.E. 2d 30 (1935).

There are two problems with this analysis. First, the Supreme Court rejected outright the analogy to veteran cases which classified the state as a special type of creditor or not a creditor within section 207 of the Act. 409 U.S. 413, 416; 34 L. Ed. 2d 608, 611. The court in *Monaco* held that the exempt money loses its identity upon the death of the veteran. For this proposition the Court relied upon *State v. Wendt*, *supra*, and *Estate of Buxton*, 246 Wis. 96; 16 N.W.2d 399 (1944). All of these cases placed the state into a separate class of creditors

---

[9] Brief For The State of New Jersey As Amicus Curiae, p. 8.

and in that manner circumvented the application of 38 U.S.C. 3101. However, the United States Supreme Court found this rationale inapposite when applied to Social Security benefits. The State is accorded no greater right than any other creditor.

Additionally, the Court in *Monaco* strictly construed the veteran statute. On the question of whether the next of kin should benefit from the exemption, the Court stated, "The statute does not expressly so provide and the court will not enlarge on its provision by inference or construction." 81 N.J. Super. 448, 450; 195 A.2d 910, 911-912 (quoting *State v. Wendt, supra.*) In *Philpott* the Supreme Court also refused to imply an exception to section 207. The Court concluded that the language of the provision is all-inclusive and that it barred on its face the State of New Jersey from reaching the payments. 409 U.S. 413, 415; 34 L. Ed. 2d 608, 611. In other words, the statute is clear and unambiguous needing no judicial gloss for a proper construction.

It has been repeatedly held by various courts that the legislative history need not be consulted in such a case. *See, e.g., Geraldine v. Miller,* 322 Mich. 85; 33 N.W. 2d 672 (1948); *United States v. McKesson & Robbins, Inc.,* 351 U.S. 305; 76 S. Ct. 937; 100 L. Ed. 1209 (1955); *Ex Parte Collett,* 337 U.S. 55; 69 S. Ct. 944; 93 L. Ed. 1207 (1949). Furthermore, the legislative history would not provide any insight, even if researched, as it is devoid of any intent of Congress, one way or another.

The substance of the present language of section 207 has been in the Social Security Act since it was first

enacted in 1935 (originally contained in §208 of the Social Security Act of 1935, 49 Stat. 620, 625). The committee reports on this provision merely paraphrase the language of the statute itself. H. Rep. No. 615, 74th Cong., 1st Sess., 21; S. Rep. No. 628, 74th Cong., 1st Sess., 32; Similarly, when Congress reenacted this provision in the Social Security Amendments of 1939, the committees stated that the provision "provides that a right to payment under this title shall not be transferable or assignable nor shall any moneys paid or payable be subject to execution or other legal process." H. Rep. No. 728, 76 Cong., 1st Sess., 45; S. Rep. No. 734, 76th Cong., 1st Sess., 53.

The Supreme Court in this situation has held, "We have been shown no legislative history on the point, and an uncertain guess at Congress' intent provides dubious ground for disregarding its plain language." *Segall v. Rochelle*, 382 U.S. 375; 86 S. Ct. 511; 15 L. Ed. 2d 428, 434 (1966); *Ex Parte Collett, supra*.

By exempting the moneys paid to the guardians of Jeanette Vary this Court would not be reaching an absurd result as suggested by Respondent. The United States Supreme Court has seen fit to reach section 207 of the Social Security Act as a broad bar against any legal process, which the Court obviously considered to be the manifest intent of Congress. By following the precedent thus established the logical extension does not result in non-payment of attorney fees or funeral expenses as argued by Respondent. The statute does not prevent voluntary transfers from the moneys paid. If the estate refused payment, other remedies are available to the creditor, *e.g.*, implied contract, quantum meruit, or promissory estoppel against the individual incurring the

debt on behalf of the estate. The coercive factor of legal process is present, which would, in most cases, cause the funds to be paid over but without actually subjecting the funds to execution, attachment, garnishment and the like, and thereby fully complying with the statute.

CONCLUSION

The case before the Court is one of first impression, considering the application of section 207 of the Social Security Act to accumulated funds held by the administrators of a decedent's estate. The Supreme Court of Michigan has erroneously held section 207 to be inapplicable and has misapplied the case of ***Philpott v Essex County Welfare Board*** to the facts presented.

Congress has clearly expressed their policy in section 207 by exempting all moneys paid for Social Security benefits. The United States Supreme Court has read that provision to be an absolute bar to the claims of any and all creditors. It should, therefore, be left to the Congress to change the scope and application of section 207.

The Supreme Court case of ***Philpott v. Essex County Welfare Board*** involved a person receiving state assistance with the state subsequently seeking reimbursement from accumulated Social Security benefits, as does the case *sub judice*. The Court in ***Philpott*** held the language of the federal statute, 42 U.S.C. §407, to be all-inclusive in deciding that a State has no better standing than any other creditor and was thus barred from seeking redress by any legal process. The statute makes no differentiation between the living and the dead, and none is to be implied. All moneys paid are exempt.

By reason of the Supremacy Clause of the Federal Constitution, the Michigan statutes restricting the full force of the federal statute are of no effect. U.S. Constitution, Art. VI, cl. 2; *Sola Electric Co. v. Jefferson Electric Co.*, 317 U.S. 173; 63 S. Ct. 172; 87 L. Ed. 165 (1942); *Hill v. State of Florida ex rel. Watson*, 325 U.S. 538; 65 S. Ct. 1373; 89 L. Ed. 1782 (1945).

RELIEF

For the reasons stated above, Petitioners pray for a writ of certiorari to the Supreme Court of Michigan.

Respectfully submitted,

I. GOODMAN COHEN
(CHARLES E. KOVSKY Of Counsel)
Attorney for Petitioners
211-214 Ford Building
Detroit, Michigan 48226
Woodward 1-1509 1-0031

OPINION AND ORDER

(State of Michigan
Probate Court — County of Wayne)

(Filed June 22, 1973)

The following are the agreed statement of facts:

Jeanette Vary was committed to Northville State Hospital on or about March 22, 1967. She became a State charge on March 22, 1968, and remained such until her death on August 8, 1971. During the period of her stay at Northville State Hospital, she incurred charges in the amount of Twenty Thousand Eighty-four and 60/100 Dollars ($20,084.60).

A claim was filed against her decedent estate and after objections to the claim by the estate, a referee was appointed to hear the contested claim. On March 15, 1973, Ricardo J. Lubienski, the duly appointed referee, filed his report with this Court recommending the allowance of the claim of the State of Michigan in the amount of Twenty Thousand Eight-four and 60/100 Dollars ($20,084.60) and the claim of the County of Wayne in the amount of Three Thousand Three Hundred Seventy and 95/100 Dollars ($3,370.95). The Probate Court confirmed the recommendation of the referee and ordered the claim of the State of Michigan and the County of Wayne paid. During the entire period of the guardianship neither the County of Wayne nor the State of Michigan billed the guardians for the care of the deceased during her period of commitment. Further, that all cash that remained in the hands of the co-fiduciaries came from Social Security benefits.

The issue framed is: May the claim of the State of Michigan and the County of Wayne for the care, support, and maintenance of a patient in a state and county hospital be satisfied from Social Security benefits?

This requires the interpretation of the Federal Social Security Act, 42USC407 which states:

> "The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law."

The case of *Philpott* v *Essex County Welfare Board*, 34 L Ed608, —US—, 93 Sct. — decided January 10, 1973, is almost a case in point. It was an unanimous view of the court interpreting the above cited statute. Setting forth the summary of the facts will clearly indicate how close the Philpott case is to the one before this court:

> "The Essex County Welfare Board sued its welfare recipient and his trustee in the Essex County Court, New Jersey, to reach a bank account in which the recipient's trustee had deposited a check for *six months' retroactive disability benefits* paid to the recipient under the Social Security Act. The County Court entered judgment against the Welfare Board (104 NJ Super 280, 249 A 2d 639) and the Appellate Division affirmed (109 NJ Super 48, 262 A 2d 227), but the New Jersey Supreme Court reversed on the basis of the recipient's agreement, executed when he applied for welfare, to reimburse the Welfare Board for all payments received (59 NJ 75, 279 A 2d 806)." (emphasis supplied)

Mr. Justice Douglas delivered the opinion of the Court. At page 611 he stated:

> "On its face the Social Security Act in §407 bars the State of New Jersey from reaching the Federal disability payments paid to Wilkes. The language is all inclusive — 'none of the moneys paid or payable under this subchapter shall be subject to execution, levy, attachments, garnishment, or other legal process.' The moneys paid as retroactive benefits were 'moneys paid . . . under this subchapter'; and the suit brought was an attempt to subject the money to 'levy, attachment . . . or other legal process.' "

Further, the Court stated:

> "The protection afforded by §407 is to 'moneys paid' and we think the analogy to veterans' benefits exemptions which we reviewed in Porter v Aetna Casualty Company, 370 US 159, 8L Ed 2d 407, 82 Sct. 1231 is relevant here. We held in that case that veterans' benefits deposited in a savings and loan association on behalf of a veteran retained the 'quality of moneys' and had not become a permanent investment. Id., at 161 8L Ed 2d 407.
>
> "In the present case, as in Porter, the funds on deposit were readily withdrawable and retained the quality 'moneys' within the purview of §407. *The Supreme Court of New Jersey referred to cases where a state which has provided care and maintenance to an incompetent veteran at times is a 'creditor' for the purposes of 38 USC §3101 [38 USCS §31017] and at other times is not. But §407 does not refer to any 'claim of creditors' but imposes a broad bar against the use of any legal process to reach all Social Secutiry benefits.* That is broad enough to include all claimants, including a state." (emphasis supplied)

There can be no question after reading the Philpott case that past, present, or future payments of Social Security benefits are not subject to "execution, levy, attachment, garnishment, or other legal process . . ." Therefore, This Court Does Determine And Order that the portion of the estate's assets that are cash on hand from Social Security benefits are not subject to the claim of the State of Michigan nor the County of Wayne.

/s/ Joseph J. Pernick
Judge of Probate
Dated: June 22, 1973

OPINION

(State of Michigan —
Circuit Court — County of Wayne)

(Filed May 1, 1974)

Jeanette Vary was committed to Northville State Hospital on or about March 22, 1968. Miss Vary died on August 8, 1971, still remaining a charge. While at Northville State Hospital during the aforementioned period, she incurred charges in the amount of $20,084.60.

A claim was filed against her decedent estate and after objections by the estate, a referee was appointed to hear the contested claim. On March 15, 1973, the appointed referee filed his report with the Probate Court for the County of Wayne, recommending the allowance of the claim of the State of Michigan ($20,084.60) and the claim of the County of Wayne ($3,370.96). The recommendation of the referee was confirmed by the Probate Court and the State and County claims were ordered paid.

The estate of Jeanette Vary, through its co-administrators, filed a Petition for Determination of Rights with the Probate Court in which they sought to have "accumulated" social security benefits in the amount of $5,547.93 excluded as assets to be used in satisfaction of the aforementioned claims.

On June 22, 1973, Judge Joseph J. Pernick of the Wayne County Probate Court, issued an Opinion and Order holding that the cash on hand from social security benefits was not subject to the State and County Claims.

The cash assets of the estate evolved from the receipt of Social Security Benefits and the entire monies on deposit are identifiable as deposited in the bank account as being monthly receipts and deposites of Social Security Benefits payable to co-guardians and co-administrators for and in behalf of now deceased, Jeanette Vary. Further, between March 22, 1967, date of commitment and August 8, 1971, date of death, and until January and February, 1972, claims were not filed.

The basic issue presented is:

Are social security benefits payable under 42 USC 407 subjected to payment of a claim filed and allowed in favor of the State of Michigan for care, support and maintenance of deceased, a former patient in a state hospital.

Petitioners base their position that said monies are not subject to the aforementioned claims on the mandate set forth in the Social Security Act 42 USC 407, which states:

> "The right of any person to any future payment under the sub-chapters all not be transferable or assignable, at law or in equity, and none of the monies paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law".

In the recent case of *Philpott* v *Essex County Welfare Board*, 34 L Ed 2d 608, 409 US 413, 93 S Ct 590, decided January 10, 1973, 42 USC 407 was considered therein. As stated by the Supreme Court, 34 L Ed, p.611:

> "On its face the Social Security Act in Section 407 bars the State of New Jersey from reaching the federal disability payments paid to Wilkes. The language is all inclusive. None of the moneys paid or payable under the subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process. The moneys paid as retroactive benefits were moneys paid . . . under this subchapter and the suit brought was an attempt to subject the money to levy, attachment . . . or other legal process."

It has been pointed out by appellants that the fact a person is committed to a state institution as a public charge does not preclude the right of the State of Michigan from seeking reimbursement from that person's estate. In looking to MCLA 330.17, one finds:

> "Patients are divided into 3 classes as follows:
>
> * * * *
>
> Such classification shall not bar the right of the state as provided herein to recover for the keep and maintenance of any patient from the estate of said patient or the ones legally liable therefor."

The estate of Jeanette Vary, deceased, constituted a single home valued between $10,000.00 and $12,000.00, which is subject to creditors' claims. The language of 42 USC 407 relating to the $5,547.39 paid to Miss Vary in Social Security Benefits should again herein be reiterated in part:

> " . . . none of the moneys paid or payable under this subchapter shall be subject . . . to other legal process."

It would seem that Section 407 imposes a broad bar against the use of any legal process to reach said social security benefits. Nowhere in Section 407 is there mention of any "claim of creditors" which would also seem to include a State as a creditor.

With respect to other issues raised, this Court concludes that the Federal Statute is all inclusive and under the doctrine of supremacy precludes any possible State restriction.

The fact that this case involves the estate of a deceased, whereas in *Philpott* the question involved an individual still living, is a difference without significance in view of the broad language of the Federal Act. It speaks of "monies paid or payable" irrespective of the recipient. Such broad language did allow no differentiation as to whether the eventual recipient was then alive or deceased.

It is to be noted that following allowable procedures, the estate may have had the benefits appropriately paid directly to the hospital to offset costs during the commitment period. If this is not done under appropriate procedure, the State is barred under the all inclusive language of the subject statues to seek redress by "other legal process".

The creditors of the estate of Jeanette Vary must satisfy their claims from the aforementioned asset, a single home. The decision of the Probate Court is affirmed. No costs.

BLAIR MOODY, JR.
Circuit Judge
Detroit, Michigan

Dated: May 1, 1974

JUDGMENT

(State of Michigan —
Circuit Court — County of Wayne)

(Filed May 17, 1974)

At a session of said Court held at the City-County Building on the 17 day of May A.D. 1974.

Present: Honorable Blair Moody, Jr., Circuit Judge.

The Court having heretofore made and filed its findings of fact and conclusions of law in the above entitled action, together with an Order for Judgment in accordance therewith, and the Court being fully informed in the premises,

It is hereby Ordered and Adjudged that a Judgment may be and hereby is entered affirming the decision of the Probate Judge for Wayne County from which the appeal was taken.

It is further Ordered and Adjudged that the sum of Five Thousand five hundred forty-seven and 93/100 ($5547.93) Dollars heretofore received by the co-guardians of Jeanette Vary and the co-administrators of the estate of Jeanette Vary, deceased, and now possessed by the co-administrators of the estate of Jeanette Vary, deceased, and identifiable as Social Security Benefits paid during the lifetime of the said Jeanette Vary be and hereby are excluded and free from application or use thereof upon any and all claims of creditors inclusive of those of the State of Michigan and the County of Wayne.

It is also Ordered and Adjudged that the creditors of the estate of Jeanette Vary must satisfy their claims from the real estate constituting an asset of the estate.

It is further Ordered that no costs be allowed.

BLAIR MOODY, JR.
Circuit Judge

OPINION

(State of Michigan — Court of Appeals)

(Filed November 12, 1975)

Before: Bronson, P.J., and V. J. Brennan and D. E. Holbrook, Jr., JJ.

D. E. Holbrook, Jr., J.

Following Jeanette Vary's death on August 8, 1971, the State of Michigan and Wayne County filed claims against her estate for charges arising out of her institutionalization at Northville State Hospital. The probate court granted the state's claim in the amount of $20,084.60 and the county's claim in the amount of $3,370.96. The estate's assets consist of a single family home valued at $10,000 to $12,000 and a bank account with a $5,547.39 balance. The bank account consists solely of the remains of social security benefits paid for the benefit of the decedent during her institutionalization.

After the probate court allowed these two claims, the co-administrators of the decedent's estate petitioned the probate court for a determination of rights concerning the bank account. Relying on *Philpott* v *Essex County Welfare Board*, 409 US 413; 93 S Ct 590; 34 L Ed 2d 608 (1973), the probate court declared that the monies in the bank account could not be used to satisfy the claims of the state and the county. On appeal, the circuit court affirmed the decision of the probate court again relying on *Philpott* v *Essex County Welfare Board*, *supra*. The state filed for leave to appeal with this Court and leave was granted.

Decedent was committed to Northville State Hospital on March 22, 1967, as a state charge.[1] While so confined the present co-administrators served as guardians of her estate. In this capacity they deposited approximately $8,000 in social security checks, from which they paid the minor guardianship expenses, the small personal expenses of the decedent while she was confined and the costs of her christian burial.

In making their claims, the state and the county are seeking reimbursement for costs of the decedent's institutionalization pursuant to MCLA 330.17; MSA 14.807.[2] Defendants do not contest that the state and county have a valid claim against the estate for the care of the decedent. However, they contend that section 207 of the social security act[3] makes the benefits paid to the decedent immune from legal process.

The section provides in relevant part:

> " *** [N]one of the moneys paid *** under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law."

---

[1]MCLA 330.17; MSA 14.807. This section has been replaced by a comprehensive chapter on reimbursements for institutionalized care in the new mental health code. MCLA 330.1800-330.1844; MSA 14.800(800)-(844).

During the first year of a person's institutionalization the state bills the county that person formerly resided in for the costs of the institutionalization. MCLA 330.21; MSA 14.811. This also has been changed by the new mental health code. MCLA 330.1302; MSA 14.800(302).

[2]This section has been replaced by a comprehensive chapter on reimbursement for institutionalized care in the new mental health code. MCLA 330.1800-330.684g MSA 14.800(800)-(844).

[3]53 Stat 1362; 42 USC 407.

Thus the sole decisional issue is whether section 207 of the social security act prohibits the use of social security benefits for the payment of accrued claims against the estate of the beneficiary after the beneficiary's death.

At a person's death it is the duty of the administrator of the person's estate to collect the assets of the person to meet the expenses of administration, pay the valid claims of creditors, and distribute the remainder to the decedent's heirs. MCLA 707.1; MSA 27.3178(381), MCLA 702.95; MSA 27.3178(165), MCLA 702.80; MSA 27.3178(150), MCLA 702.93; MSA 27.3178(163). Since accumulated social security benefits are the property of the decedent, they pass to his estate at his death. *Cf. Biers* v *Federal Security Administrator*, 172 F2d 34 (CA 2 1949), *Gardner* v *Ewing*, 88 F Supp 315 (SD Ohio), *aff'd*, 185 F2d 781 (CA 6 1950), *rev'd in part on other grounds*, 341 US 321, 71 S Ct 684; 95 L Ed 968 (1951). Once the monies are in the estate they must be dispursed either as expenses, claims, or distributions before the estate can be closed.

Under ordinary circumstances the bank account in dispute would be disbursed in accordance with the Michigan statutes. However, since the social security act is a federal statute, under the Supremacy Clause of the United States Constitution if there is a conflict between the statutes the federal statute must control. On its face section 207 seems to prohibit any creditor from using "any legal process" to reach accumulated social security benefits of any beneficiary. *Philpott* v *Essex County Welfare Board*, *supra*. To further protect social security recipients from having their benefits subjected to legal process the Supreme Court has interpreted the section to mean that funds are protected in checking and savings accounts. *Philpott* v *Essex County Welfare Board*, *supra* at 416, *accord Porter* v *Aetna Casualty & Surety Co*, 370 US 159; 82 S Ct 1231; 8 L Ed 2d 407 (1962), *cf. Lawrence* v *Shaw*, 300 US 245; 57 S Ct 443; 81 L Ed 623 (1937), *see also* 20 CFR 404.1608.

This protection from "any legal process" for accumulated social security benefits goes to the underlying principle of the social security system. The underlying principle of the system is to protect the social security beneficiaries from some of the hardships of existence. *United States* v *Silk*, 331 US 704, 711; 67 S Ct 1463; 91 L Ed 1757 (1947). It simply does not comport with the philosophy of the social security act to allow a creditor to take what is necessary for bare existence at the current time for past debts. Even allowing a creditor to reach accumulations of benefits does not comport with this philosophy since at any time the accumulation may be necessary for the recipient's current needs. *In re Algier Estate*, 43 Pa D & C2d 351, 357 (Orphan's Court 1967).

In the present case all the decedent beneficiary's current needs were met when the funds in the guardianship account were used to provide her with a christian burial. At the present time the decedent has no reasonably foreseeable current needs. There is no use to which the funds could be put that will aid the decedent in meeting the barest essentials of *life*. Furthermore, there is nothing in the record to indicate that these funds will assist anyone dependent on the decedent for their support in meeting the bare necessities of life. *Cf. Good* v *Wohlgemuth*, ___ Pa Cmwlth ___; 327 A2d 397 (1974).

Although the social security benefits retain their distinctive character in a traceable bank account, once they pass to the estate of the recipient they lose that characteristic. *Accord*, *State* v *Monaco*, 81 NJ Super 448; 195 A2d 910 (1963), *State* v *Wendt*, 94 Ohio App 440; 116 NE2d 30 (1953). This is because the recipient and the recipient's estate are different "persons" even though the latter is a mere continuation of the former. When the

accumulated funds lose the characteristic of being traceable social security receipts they lose the protection of section 207 of the social security act. *Accord, State* v *Monaco, supra.*

Hence, we conclude that social security funds remaining constructively in the decedent's hand at the time of death are a general asset of the estate. As such the funds are available to pay proper administration expenses and may be reached by creditors who have timely filed claims with the probate court. MCLA 702.95; MSA 27.3178(165). This is in accord with the underlying principles of section 207 of the social security act, since the purpose of this section is to protect the recipient, not the heirs of the recipient. *Accord, State* v *Monaco, supra, Estate of Buxton*, 246 Wis 97; 16 NW2d 399 (1944).

The judgment of the circuit court is reversed and the case is remanded to the probate court for proceedings consistent with this opinion. No costs, a public question being involved.

OPINION

(State of Michigan — Court of Appeals)

Before: Bronson, P.J., and V. J. Brennan and D. E. Holbrook, Jr., JJ.

Bronson, P.J., dissenting.

As the majority points out, both the probate court and the circuit court found *Philpott* v *Essex County Welfare Board,*

409 US 413; 93 S Ct 590; 34 L Ed 2d 608 (1973), to be controlling here. The basis for that decision was set forth in the well-reasoned opinion of Wayne County Circuit Court Judge Blair Moody, Jr.:

> "The fact that this case involves the estate of a deceased, whereas in *Philpott* the question involved an individual still living, is a difference without significance in view of the broad language of the federal act. It speaks of 'monies paid or payable' irrespective of the recipient. Such broad language did allow no differentiation as to whether the eventual recipient was then alive or deceased."

I agree and vote to affirm.

OPINION

(State of Michigan
in the Supreme Court)

(Filed October 6, 1977)

(In the Matter of the Estate of Jeanette Vary, Deceased, State Of Michigan, Department Of The Treasury, Revenue Division, Plaintiff-Appellee, v Susie Ivy and I. Goodman Cohen, Co-Administrators, Defendants-Appellants.)

Before The Entire Bench (Except for Moody, J.)

M. S. COLEMAN, J.

Mrs. Jeanette Vary spent the last three years of her life as a ward of the state at Northville State Hospital. It is agreed that she died owing the state approximately $20,000 for the care she had received. One asset in her

estate is a bank account containing approximately $5,500, accumulated from benefits paid to her during her lifetime pursuant to subchapter II of the Social Security Act.[1] The state has filed a valid claim against her estate and wishes to satisfy this claim in part from the accumulated benefits in the bank account.[2]

The issue is whether these benefits are exempt from the state's claim because of 42 USC 407, which provides *inter alia*:

> "***none of the moneys paid or payable or rights existing under this subchapter [subchapter II] shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law."

The lower courts disagreed as to whether the benefits are exempt. The probate court found they are. The circuit court agreed. However, the Court of Appeals reversed[3] holding that paid "social security funds remaining constructively in decedent's hand at the time of death are a general asset of the estate. As such, the funds are available to pay proper administration expenses and may be reached by creditors who have timely filed claims with the probate court MCLA 702.95; MSA 27.3178(165)".

We affirm.

---

[1] 42 USC 401, *et seq* (Federal Old Age, Survivors and Disability Insurance Benefits).

[2] The other assets in Mrs. Vary's estate are not worth enough to satisfy the state's claim.

[3] *In re Vary*, 65 Mich App 447; 237 NW2d 498 (1975).

I – Purpose of Social Security Act

A purpose of the Social Security Act as announced in 42 USCA 301 is to enable "each State, as far as practicable under the conditions in such State, to furnish financial assistance to aged needy individuals".

The parties agree and the Court of Appeals holds that so long as Jeanette Vary lived, her accumulated social security benefits generally could not be diverted by legal process to creditors.[4]

The basic question is whether the personal character of social security payments ends at the death of the person for whose care and maintenance they are made or whether the payments retain the same protected character after death as before.

Inherent is the question of whether there is a conflict between Federal social security legislation and state legislation regarding estates of decedents.

This is a case of first impression in Michigan.

II – Federal Case Law

The United States Supreme Court has considered only the disposition of accrued social security monies during the life of the beneficiary. However, some of those cases cast light upon the purpose of the act and upon that elusive legal concept known as the determination of "legislative intent". Because the clear wording of the act

---

[4] The only two exceptions in the Social Security Act are inapplicable. They relate to tax claims of the Internal Revenue Service and to child support and alimony.

need suffer no further exception in order to reach the conclusion herein, we consider "legislative intent" in conjunction with the Legislature's words.

In finding the social security act constitutional, Justice Cardozo observed for a unanimous Court:

> "The hope behind this statute is to save men and women from the rigors of the poor house as well as from the haunting fear that such a lot awaits them when journey's end is near." *Helvering v Davis*, 301 US 619; 57 S Ct 904; 81 L Ed 1307 (1937).

Throughout subsequent cases, the purpose of the act is stated consistently in different words.[5]

Our Court of Appeals acknowledged that if there was a conflict between Michigan law on disbursement of an estate and the Social Security Act, the latter would control. However, we should not create a conflict where there is none. Because social security benefits are to protect recipients "from some of the hardships of existence", it would "not comport with the philosophy of the Social Security Act" to allow creditors to take those benefits while the individual lives. But in Mrs. Vary's

---

[5] See *Social Security Board v Nierotko*, 327 US 358; 66 S Ct 637; 90 L Ed 718 (1946): "The purpose of the Federal Old Age Benefits of the Social Security Act is to provide funds * * * for the decent support of the elderly workmen who have ceased to labor". *United States v Silk*, 331 US 704; 67 S Ct 1463; 91 L Ed 1757 (1947), which states that the underlying purpose of the Act is "the protection of its beneficiaries from some of the hardships of existence". *Delno v Celebrezze*, 347 F2d 159 (CA 9, 1965): "The general purpose of old-age, survivor and disability insurance provision * * * is to protect workers and their dependents from the risk of loss of income due to the insured's old age, death or disability." *Coy v Folsom*, 228 F2d 276, 279 (CA 3, 1955): "Old-age benefits are clearly intended to provide funds currently necessary to enable the insured to live".

case, there was "no use to which the funds would be put that will aid . . . in meeting the barest essentials of *life*". (Emphasis in original.) The Court said that although the benefits "retain their distinctive character in a traceable bank account, once they pass to the estate of the recipient they lose that characteristic."

A case upon which the Court of Appeals relied was *Philpott v Essex County Welfare Board*, 409 US 413; 93 S Ct 590; 34 L Ed 2d 608 (1973). An individual receiving state welfare benefits was awarded retroactive social security benefits. The state sought to reach the money. The Court said because the funds were on deposit and readily withdrawable, they "retained the quality of 'moneys' within the purview of §407". The recipient was alive and subject to personal needs.

The Court likened that case to *Porter v Aetna Casualty*, 370 US 159; 82 S Ct 1231; 8 L Ed 2d 407 (1962), which involved veteran's benefits deposited in an account in a federal savings and loan association. The statute rendered payments "due or to become due . . . exempt from the claim of creditors, and . . . not . . . liable to . . . any legal or equitable process whatever, either before or after receipt by the beneficiary".

In *Porter*, the Court reviewed the case law involving veterans' exemptions. It had been held that benefits lost their exempt quality when converted into permanent investments.[6] Bank deposits were still exempt if they "remained subject to the demand and use as the needs of the veteran for support and maintenance required".[7]

---

[6] See *Trotter v Tennessee*, 290 US 354; 54 S Ct 138; 78 L Ed 358 (1933).

[7] See *Lawrence v Shaw*, 300 US 245; 57 S Ct 443; 81 L Ed 623 (1937).

However, negotiable notes and United States bonds purchased with benefit payments were not exempt.[8]

Applying case law to the account in *Porter*, the Court said it "appears clear to us that the savings and loan deposits here, rather than being investments, are the only funds presently available to meet petitioner's needs". The legislation should "protect funds granted by the Congress for the maintenance and support of the beneficiaries". The veteran should be able to select a safekeeping method "provided the benefit funds . . . are readily available as needed for support and maintenance".

All the parties to our case agree that the state could not collect by legal process from Mrs. Vary's social security benefits while she was alive. All agree that *Philpott*, as a minimum, provides this protection.

In *Beers v Federal Security Administrator*, 172 F2d 34, 36 (CA 2, 1949), the Court said in applicable part:

> "Hence checks issued to him pursuant to certification are freely transferable by him, and on his death pass by operation of law to his executor or administrator."

Defendants argue that *Philpott* overruled *Beers*[9] *sub silentio*. However, the *Philpott* court did not consider or discuss in any part the nature of accumulated social

---

[8] See *Carrier v Bryant*, 306 US 545; 59 S Ct 707; 83 L Ed 976 (1939).

[9] Also see *Gardner v Ewing*, 88 F Supp 315 (SD Ohio); aff'd 185 F 2d 781 (CA 6, 1950), reversed on other grounds, 341 US 321; 71 S Ct 684; 95 L Ed 968 (1951).

security funds after death of the beneficiary. *Philpott* is instructive of the legislative purpose, but does not speak to our issue. However, defendants argue that social security benefits are a *res* which does not change its protected personal characteristic even after death of the beneficiary. We find it presumptuous to read into *Philpott* an unstated extension of the stated legislative object. Such an extension would go beyond the personal protection of "aged needy individuals".

The protection, being personal to the recipient, dies when that person dies and it no longer inures to his or her benefit.

III – Michigan Concerns

In fact, the interpretation urged by defendants might well inure to the disadvantage of the living beneficiary. Access of the "aged needy" individual to credit or to contractual relationships involving the payment of money could be diminished were there no possibility of collecting just debts even from a decedent's estate when remaining funds, if any, could no longer assist the now deceased person (*e.g.*, extended medical care, a loan to pay taxes on the home, a convenient charge account could well be made unlikely should we adopt that interpretation).

According to defendants' theory, it also would appear that an estate consisting of accumulated social security benefits might not be probatable under existing law partially because no funds could be diverted for costs required by law. If the social security funds were commingled with other funds, another problem would arise in differentiating which was "protected" and which was not. Payment of some state and local taxes, in addition to other lawful debts, would be precluded.

We cannot attribute to the Legislature such carelessness or such callousness.

The Court in *Recor v Commercial and Savings Bank of St Clair*, 142 Mich 479; 106 NW 82 (1905), found similar concerns. The plaintiff had a three-fourths interest in a barge. The defendant's husband owned the remaining fourth. When the husband died, plaintiff sued the wife on an indebtedness concerning the barge. The moneys available to the wife were proceeds from a benefit certificate. A statute said the "money . . . to be paid" under such a certificate "shall not be liable . . . to pay any debt or liability . . . of any beneficiary". The trial court said the wife's money was exempt, but this Court reversed.

We said if the trial court were sustained, "the entire amount of money paid beneficiaries [would] be removed from being subjected to taxation or legal process". The Court did "not think the statute [would] bear such an interpretation." Certainly, if the Legislature intended "to make so important and unlimited an exemption, it would have used language indicative of such intention".

We think the same reasoning applies here. If the Congress intended to exempt benefits such as paid to Mrs. Vary from legal process even when the recipient died, it would have said so or would have used different wording. Both *Philpott* and *Porter* indicate that such benefits are for support of living people with continuing needs. Exemption is a protection that does not survive the individual. It is a personal protection which dies with the beneficiary.

The director of the Social Security Administration agrees with this position. In a letter to the Michigan Revenue Commission, the director noted that the trial

court decision holding that the state could not recover from Mrs. Vary's estate. He wrote:

> "However, it is the view of the Social Security Administration that section 207 of the Social Security Act and the *Philpott* case, relied upon by the Michigan court, apply to accrued social security benefits being conserved only by (or on behalf of) a *living* beneficiary. The Social Security Administration does not read section 207 to protect the benefits of a *deceased* worker from legal process and does not agree that the *Philpott* decision must *necessarily* be read to protect the estate of a *deceased* beneficiary from the claims of creditors. * * * It is true that in *Philpott* the U. S. Supreme Court used very broad language * * *, but it should be borne in mind that the court had before it a case in which benefits were being conserved for a *living* beneficiary. The clear purpose of section 207 was to assure that social security benefits are available for the support of the beneficiary on whose behalf they are paid. That purpose can no longer be served after the beneficiary has died." (Emphasis in orginal.)

The decedent's spouse and dependents are not abandoned by the Social Security Act. Another section provides them benefits. They are placed in a better position than the spouse and dependents of a decedent not receiving social security benefits.

IV – Statutory Wording

Although it might be rationalized that the goods and services of this proven creditor were provided to assist the living beneficiary and therefore should be paid, this rationale evades the issue and would resolve only one portion of the dilemma.

Therefore, we look to the stated object of the Social Security Act and conform the wording of 42 USC 407 to it.

We are persuaded that a simple, straighforward interpretation permits not only a logical and ethical conclusion, but is necessary to avoid convolution inimicable to the intent to protect the needy and aged person.

The words "none of the moneys paid or payable or rights existing" under subchapter II refer to moneys and rights of living persons entitled to receive the designated funds. Whether the funds were saved, spent or given away is not important. The section goes on to mandate protection of those funds from "execution, levy, attachment, garnishment" or "the operation of any bankruptcy or insolvency law". All of the actions named are in terms commonly employed regarding living persons. The words "or other legal process" must be interpreted as consistent with the named actions at law. There is no language anticipating death.

Further, the Federal act in no way purports to do with state law other than to provide for possible payment of monies which were due the living person into the "estate" of the now deceased. It is consistent with the wording of the act to find that Congress intended the state law to apply in the event of an estate subject to probate.

V – Conclusion

The object of the Social Security Act "to furnish financial assistance to aged needy individuals" is consistent with the clear wording of 42 USC 407 which seeks to protect those individuals by prohibiting named

actions (and other legal process) commonly available against living persons. The phrase "and other legal process" must be interpreted in context with the remainder of the statute, all of which refers to monies accrued to the benefit of an individual while alive and actions commonly available against the living.

Philpott, supra, may be all-encompassing as to legal process directed against deposits of a living beneficiary, but neither the facts of the case nor the wording of that Court refer to accumulated social security monies after death. To strain the meaning so as to "protect" such funds after death leads to absurdities, conflict of state and Federal laws and injustice not only to those who might have extended needed credit (and others), but to the social security recipient who could anticipate a curtailment of credit upon such an interpretation. We do not ascribe to the *Philpott* Court nor to the Congress such an intent.

Social security is imbued with a personal characteristic which dies with the beneficiary. Thereafter, if any funds pass into an estate for probate as did Jeanette Vary's, they are subjected to state law.

We would not create a conflict where there is none.

The Court of Appeals is affirmed. There are no costs, this having been a public question.

/s/ Mary S. Coleman
/s/ G. Mennen Williams
/s/ John W. Fitzgerald
/s/ James L. Ryan
/s/ Thomas Giles Kavanagh

OPINION

(State of Michigan in the Supreme Court)

In the Matter of the Estate of Jeanette Vary, Deceased. State Of Michigan, Department Of The Treasury, Revenue Division, Plaintiff-Appellee, v Susie Ivy and I. Goodman Cohen, Co-Administrators, Defendants-Appellants.

BEFORE THE ENTIRE BENCH

LEVIN, J.

Jeanette Vary spent her last years at Northville State Hospital where she incurred charges of $23,450. A statute authorizes the state to seek reimbursement. The assets of her estate were a home worth $10,000-$12,000 and $5,500 in social security payments accumulated in a bank account by her guardians, Susie Ivy and I. Goodman Cohen.

The issue is whether the accumulated social security payments are exempt from the claims of Vary's creditors under the provisions of a federal statute.

The United States Supreme Court, construing this provision, reversed a decision of the New Jersey Supreme Court which allowed a county welfare board to reach the proceeds of disability benefits, paid under the Social Security Act, which had been deposited by the recipient's trustee in a bank account. *Philpott* v *Essex County Welfare Board*, 409 US 413, 416; 93 S Ct 590; 34 L Ed 2d 608 (1973).

The Court referred to analogous exemptions for veterans' benefits and its earlier decision[1] that such "benefits deposited in a savings and loan association on behalf of a veteran retained the 'quality of moneys' and had not become a permanent investment."[2]

The probate judge and the circuit judge found that the accumulated social security payments were exempt under the federal statute. The Court of Appeals reversed, distinguishing *Philpott* on the ground that here the recipient is dead while the recipient in *Philpott* was alive,

---

[1] *Porter* v *Aetna Casualty Co*, 370 US 159, 161-162; 82 S Ct 1231; 8 L Ed 2d 407 (1962).

[2] In *Trotter* v *Tennessee*, 290 US 354, 356; 54 S Ct 138; 78 L Ed 358 (1933), the Court held that where veterans' benefits were invested in real estate they "lost the quality of moneys" and thereby were converted into non-exempt "permanent investments." Subsequently, benefits deposited in bank accounts were held to be exempt, *Lawrence* v *Shaw*, 300 US 245; 57 S Ct 443; 81 L Ed 623; 108 ALR 1102 (1937), but funds used to purchase negotiable notes and United States bonds were ruled non-exempt because "held as investments," *Carrier* v *Bryant*, 306 US 545; 59 S Ct 707; 93 L Ed 976 (1939). In *Porter*, *supra*, the funds were deposited in a savings and loan association.

and therefore allowing the state to recover will not cause any deprivation to the person Congress sought to protect.[3]

While it may be reasonable as the state argues and this Court holds, to terminate the exemption upon the recipient's death, there is "no token of a purpose"[4] in the language employed by Congress so to limit the extent of the exemption.

---

[3] Judge Bronson dissented:

> "As the majority points out, both the probate court and the circuit court found *Philpott* v *Essex County Welfare Board*, 409 US 413; 34 L Ed 2d 608 (1973), to be controlling here. The basis for that decision was set forth in the well-reasoned opinion of Wayne County Circuit Court Judge Blair Moody, Jr.:
>
> > " 'The fact that this case involves the estate of a deceased, whereas in *Philpott* the question involved an individual still living, is a difference without significance in view of the broad language of the Federal Act. It speaks of "monies paid or payable" irrespective of the recipient. Such broad language did allow no differentiation as to whether the eventual recipient was then alive or deceased.'
>
> "I agree and vote to affirm." *Department of Treasury* v *Ivy*, 65 Mich App 447, 453-454; 237 NW2d 498 (1975).

[4] *Trotter* v *Tennessee*, *supra*, p 357.

I

The statute reads:

"The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law." 42 USC 407.

The first clause is a limitation on the power of the payee: his right to any future payment "shall not be transferable or assignable".

The second clause is a limitation on the rights of creditors: "none of the moneys paid or payable * * * shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law."[3]

No creditor, including the state (*Philpott*), may use legal process to reach "moneys paid or payable * * * under this subchapter."

We all agree that creditors cannot complain of the recipient's use, misuse or nonuse of the moneys. As stated by this Court, the funds are protected whether "saved, spent or given away." The limitation of the

---

[3] If the state, consistent with state law and other federal law, can condition admission to a state institution and continued maintenance in the institution on actual payment to the state of social security benefits, it might effectively reach those benefits without resort to "legal process." *See Philpott* v *Essex County Welfare Board*, 409 US 413, 416; 93 S Ct 590; 34 L Ed 2d 608 (1973).

second clause is operative without regard to whether the recipient uses the money sensibly, gives it away or squanders it.

The exemption continues, apart from exceptions stated in other legislation,[6] as long as the payments retain the quality of moneys and until permanently invested. A recipient may, thus, give the moneys to a dependent or other person. He may create an inter vivos trust or a joint bank account reserving in terms or in effect a life estate, and no creditor could reach the interest of the donee, remainderperson or surviving tenant so created.

This Court's construction, treating the exemption as coterminous with the life of the recipient, discou ages frugality and encourges well-advised debtors to make inter vivos donative transactions to protect accumulated benefits from the claims of creditors.

The carefully-written letter from the Director of the Social Security Administration to the Michigan revenue commissioner does not reach the question before us.[7]

---

[6] 26 USC 6331 (claims of the Internal Revenue Service); 42 USC 659 (child support and alimony).

[7] The letter states that it is the "policy" of the Social Security Administration that reasonable charges for care and maintenance of an institutionalized beneficiary "should be paid" where other personal needs have been met; the representative payee "should" give highest priority; a payee is "requested" to be aware, etc; the payee "should" allot a reasonable share. "Should" does not mean "must."

The question is not whether the guardians might properly have used (*should* have used) the accumulated funds to reimburse the state but whether they must use (can be *required* to use) the funds to pay this debt.

This Court's co-terminous construction is based on the assumption that social security "is imbued with a personal characteristic which dies with the beneficiary."[8] This ignores that social security payments sustain not only the recipient but his or her dependents.[9] Accumulations are likely to represent a reduction in the level of expenditure by and for dependents as well as the recipient.

---

[8] This Court states that the "basic question is whether the *personal* character of the social security payments ends at the death of the person for whose care and maintenance they are made" and concludes that "the protection, being *personal* to the recipient, dies when that person dies and it no longer inures to his or her benefit" (emphasis supplied).

[9] While the primary purpose of social security is to assist the aged or disabled recipient, social security payments assist not only the recipient but also his dependents.

The act provides for additional allowances for the recipient's spouse and children which, pursuant to regulations, may be included in the principal recipient's check or in a separate check issued either to the principal recipient or the dependent. The statutory allocation of benefits should not be construed as creating separate funds with co-terminous exemptions so that upon the death of spouse, parent or child creditors may enforce their claims in preference to the survivors.

Also, there are persons who may in fact be dependent on the recipient who are not eligible for additional allowances: the recipient's "roommate", his or her children over 18 and not attending school, children over 22 even if in school, children of any age who are married, legitimate or illegitimate grandchildren, siblings and their children, aunts and uncles and grand parents.

In preserving accumulations againt the claims of creditors, the exemption protects dependents as well as the recipient. The characterization of the exemption as personal ascribes to Congress a limiting purpose nowhere found in the Social Security Act and at odds with its general purpose.

There is as much reason to believe that Congress intended that accumulations of frugality would be available for the continuing needs or sustenance of those who survive the recipient, who often will have been sustained by such payments, as there is to believe that Congress intended that the relatively small amounts ordinarily accumulated must be used to pay the recipient's creditors.

The Court of Appeals, recognizing that in another case a dependent of the social security recipient might have need for the funds, declared: "There is nothing in the record to indicate that these funds will assist anyone dependent on the decedent for their support in meeting the bare necessities of life."

The issue would be far clearer if Jeanette Vary had left a surviving spouse, dependent parent or child.[10] The absence of dependents in this case facilitates the co-terminous construction; it will be difficult to limit the line so drawn to cases where the recipient has no

---

[10] "The general purpose of old-age, survivors and disability insurance provisions * * * is to protect workers and their dependents from the risk of loss of income due to the insured's old age, death or disability." *Delno v Celebreeze*, 347 F2d 159, 161 (CA 9, 1965).

survivors. Having said that the exemption is "personal" to the recipient and that it ends upon death, it will be difficult to explain why dependent spouses, parents, children or other heirs should have priority over the claims of creditors.[11]

II

Stating the issue in terms of conflict between federal and state law suggests that such conflict is to be avoided. It is, however, the essence of such an exemption to create conflict between the federal law establishing the exemption and state law allowing persons to assign their property and creditors to proceed against a debtor's property. In enacting this exemption Congress necessarily created conflict between federal and state law.

The argument that the co-terminous construction will encourage the extension of credit to the aged needy hypothesizes that creditors extend credit to aged persons

---

[11] Limiting the exemption will encourage creditors to seek other limitations. If the exemption is "personal," designed to protect moneys paid for the "care and maintenance" of the recipient, creditors may seek to question dispositions of the funds during the lifetime of the recipient on the grounds that the disposition is not compatible with the care and maintenance purpose of the exemption.

on the tripartite assumption that debtors accumulate social security payments, and the accumulations will not be expended during the recipient's lifetime, and creditors are willing to wait until some indeterminate time in the future when what remains of the accumulations becomes available upon the recipient's death to pay their claims. There is no reason to suppose that credit is extended on such a tenuous basis.

It has also been suggested that the exempt funds might be commingled with non-exempt funds, but that can occur during the lifetime of the recipient.

If the recipient is able to accumulate social security payments there are likely, as here, to be sufficient other assets to cover the probate and other costs of transferring the funds.

I would reverse the Court of Appeals and remand to the probate court for further proceedings consistent with this opinion.

/s/ Charles L. Levin

Supreme Court, U. S.
FILED
FEB 1 1978
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77-965

IN THE MATTER OF THE ESTATE OF
JEANETTE VARY, DECEASED
SUSIE IVY and I. GOODMAN COHEN,
Co-Administrators,

Petitioners,

v

STATE OF MICHIGAN, DEPARTMENT OF
THE TREASURY, REVENUE DIVISION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF MICHIGAN

BRIEF FOR RESPONDENT IN OPPOSITION

FRANK J. KELLEY
Attorney General

Robert A. Derengoski
Solicitor General

Richard R. Roesch
E. David Brockman
Assistant Attorneys General

Dated: January 27, 1978

PRINTED BY [illegible]

TABLE OF CONTENTS

	Page
Index of Authorities	ii
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statutes Involved	2
Statement of the Case	2
Argument	
I. The Petition Presents No Issue Of Sufficient Importance To Warrant Review By This Court	3
II. Accumulated Social Security Benefits Are A Non-Exempt General Asset Of The Decedent's Estate And Subject To The Valid Claims Of Creditors Under State Law	5
A. The Legislative History Of The Social Security Act And Judicial Interpretations Of The Act Support The Conclusion That The Chief Concern Of Congress Was To Provide For The Needs Of Living Recipients	5
B. *Philpott* v *Essex County Welfare Board*, 409 US 413 (1973) Does Not Control The Disposition Of This Case	13
Conclusion and Relief Sought	19

INDEX OF AUTHORITIES

Page

Beers v Federal Security Administrator,
172 F2d 34, 36 (CA 2, 1949) 16-17

Butler v Fleming, 288 F2d 591 (CA 5, 1961) 12

Coy v Folsom, 228 F2d 276 (CA 3, 1955) 12

Delno v Celebrezze, 347 F2d 159, 161 (CA 9, 1965) 12-13

Helvering v Davis, 301 US 619; 57 S Ct 904;
81 L Ed 1314 (1937) 9-10

Hayes v Celebrezze, 311 F2d 747 (CA 5, 1963) 12

Hill v State of Florida ex rel Watson, 325 US 538;
65 S Ct 1373; 89 L Ed 1782 (1944) 4

In re Buxton's Estate, 246 Wis 97, 16 NW2d 399 (1944) 18

In re Vary Estate, 65 Mich App 447;
237 NW2d 498 (1975) 1

In re Vary Estate, 401 Mich 340; 258 NW2d 11 (1977) 1, 4, 15

Philpott v Essex County Welfare Board,
409 US 413 (1973) 4, 13, 14, 16, 17

Social Security Board v Nierotko, 327 US 358, 364;
66 S Ct 637; 90 L Ed 718 (1946) 10

Sola Electric Co v Jefferson Electric Co, 317 US 173;
63 S Ct 172; 87 L Ed 165 (1942) 4

State v Monaco, 81 NJ Super 448, 195 A2d 910 (1963) 18

State v Wendt, 94 Ohio App 440, 116 NE2d 30 (1953) 18

United States v Silk, 331 US 704, 710-711;
67 S Ct 1463; 91 L Ed 1757 (1947) 10-11

Page

MCLA 330.27; MSA 14.817 ..... 3, 4

MCLA 330.1001; MSA 14.800(1) 3

38 USC § 3101 18

42 USC § 407 .....3, 4, 7, 9, 13, 14, 16, 17, 18, 19

74th Congress, First Session, House of Representatives
Report No. 615, April 5, 1935 6-7

74th Congress, First Session, Senate Report No. 628, p 2,
May 13, 1935 5-6

76th Congress, First Session, House of Representatives
Report No. 728 (1939) 8-9

76th Congress, First Session,
Senate Report No. 734 (1939) 8-9

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77-945

IN THE MATTER OF THE ESTATE OF
JEANETTE VARY, DECEASED
SUSIE IVY and I. GOODMAN COHEN,
Co-Administrators,

Petitioners,

v

STATE OF MICHIGAN, DEPARTMENT OF
THE TREASURY, REVENUE DIVISION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The unreported opinion and order of the probate court exempting the social security funds from the claim of the State of Michigan was filed on June 22, 1973, and is printed at Petitioner's Appendix pp 41-44. The unreported opinion of the circuit court, sitting as an appellate court, affirming the decision of the trial court was filed on May 1, 1974, and is printed at Petitioner's Appendix pp 44-48. The Michigan Court of Appeals reversed the circuit court, *In re Vary Estate*, 65 Mich App 447; 237 NW2d 498 (1975), (Petitioner's Appendix pp 49-54), and the Supreme Court of Michigan affirmed, *In re Vary Estate*, 401 Mich 340; 258 NW2d 11 (1977) (Petitioner's Appendix pp 54-73).

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition for a Writ of Certiorari.

QUESTIONS PRESENTED

I.

Does the Petition present any issue of sufficient impact or importance to warrant review by this Court?

II.

Are accumulated social security benefits a non-exempt general asset of a decedent's estate and subject to the valid claims of creditors under state law?

STATUTES INVOLVED

The Petition adequately sets forth the statutes involved.

STATEMENT OF THE CASE

The Petition contains an adequate statement of the case.

ARGUMENT

I.

THE PETITION PRESENTS NO ISSUE OF SUFFICIENT IMPORTANCE TO WARRANT REVIEW BY THIS COURT.

In the "Question Presented for Review" the Petition (p 2) frames the issue in this case as whether a state statute may "override" 42 USC § 407 in violation of the Supremacy Clause of the United States Constitution. Although no statute is cited, Respondent believes Petitioner refers to MCLA 330.27; MSA 14.817 which is quoted on pp 3-6 of the Petition, although the Petition does not indicate that the statute was repealed in 1974 by Michigan's Mental Health Code, MCLA 330.1001, *et seq*; MSA 14.800(1), *et seq*. Respondent respectfully submits that because the challenged statute has been repealed, this case is of limited impact and does not present an issue of sufficient importance to justify granting certiorari.

Furthermore, Respondent respectfully submits that this case does not present a genuine Supremacy Clause issue because Respondent does not allege that any Michigan statute conflicts with or "overrides" 42 USC § 407. Apparently, the only Michigan Statute challenged by Petitioner is MCLA 330.27 which permits the State to petition the probate court to subject the estate to the payment of expenses incurred by the State in the care of the deceased patient. Petitioner has never challenged the validity of this statute or the validity of the State's claim in the instant case, which was allowed by the probate court. See "Statement of the Case," Petition p 7. Their position throughout this litigation has merely been that a portion of the decedent's estate is unavailable for payment of the State's valid claim because of the exemption conferred by 42 USC § 407. Respondent, however, has never alleged

that MCLA 330.27 conflicts with or "overrides" 42 USC § 407, or that 42 USC § 407 is invalid; the State maintains only that the exemption contained in 42 USC § 407 does not apply to this decedent's estate.

Examination of the "Question Presented for Review" in the Petition in this case reveals that it is virtually a verbatim quotation of the question presented in the petition for a writ of certiorari filed in *Philpott* v *Essex Coutny Welfare Board*, 409 US 413 (1973). (This explains the confusing reference to "welfare benefits" contained in the Petitioner's "Question Presented," since the instant case does not involve welfare.) Although *Philpott* may have involved a genuine Supremacy Clause issue because of the conflict between New Jersey's reimbursement statute and 42 USC § 407, the instant case contains no such conflict and even though Petitioner cites *Sola Electric Co* v *Jefferson Electric Co*, 317 US 173; 63 S Ct 172; 87 L Ed 165 (1942), and *Hill* v *State of Florida ex rel Watson*, 325 US 538; 65 S Ct 1373; 89 L Ed 1782 (1944) in support of its Supremacy Clause argument, those cases are inapposite. *Sola* held only that a local rule of estoppel must yield in favor of the Sherman Act's prohibition on price-fixing, and in *Hill* this Court merely held that a state licensing statute was invalid since it interfered with the operation of the National Labor Relations Act. In the instant case, on the other hand, there simply is no conflict between Michigan law and 42 USC § 407, as the Michigan Supreme Court correctly noted, *In re Vary Estate*, *supra*, 401 Mich at 353: "We would not create a conflict where there is none."

Respondent respectfully submits that because there is no genuine Supremacy Clause issue here, because there is no allegation of conflict between state and federal law, and because there is no allegation of invalidity of any state or federal law, the Petition does not present any issue of sufficient importance to warrant review by this Court.

II.

ACCUMULATED SOCIAL SECURITY BENEFITS ARE A NON-EXEMPT GENERAL ASSET OF THE DECEDENT'S ESTATE AND SUBJECT TO THE VALID CLAIMS OF CREDITORS UNDER STATE LAW.

A.

THE LEGISLATIVE HISTORY OF THE SOCIAL SECURITY ACT AND JUDICIAL INTERPRETATION OF THE ACT SUPPORT THE CONCLUSION THAT THE CHIEF CONCERN OF CONGRESS WAS TO PROVIDE FOR THE NEEDS OF LIVING RECIPIENTS.

Contrary to the argument of Petitioner (Petition, pp 37-38), a review of the legislative history of the Social Security Act demonstrates the congressional concern for recipients' needs as the prime force behind enactment of the statute. Prior to this far-reaching enactment, the Senate Finance Committee had been instructed to study the whole aspect of insecurity in our economic life and to make recommendations. (74th Congress, First Session, Senate Report No. 628, p 2, May 13, 1935, Calendar No. 661). The Senate Finance Committee reported the results of its legislative hearings in the above-noted Committee Report. The following excerpts from said Report are illuminating as to the purpose which generated federal old age and survivors insurance benefits, more commonly known as Social Security benefits:

> "During the depression period the country has become keenly conscious of the problem of providing security for aged people who are without adequate means of support. Dependency in old age is a hazard which faces everybody. • • • [p 4]

"• • •

"World experience has demonstrated that the best way to provide for old people who are dependent upon the public for support is through old-age assistance (popularly called 'old-age pensions'). • • • [p 4]

"• • •

"In addition to the increase in the number of the aged, we must anticipate an increase in the aged who will be dependent upon the public for support. This tendency is likely to become more marked during the next decades, since so many of the people who are past middle age have lost both their savings and their employment and are not likely to be able to build up adequate provisions for their old age in the few remaining years of the active period of their lives. • • •" [pp 6-7]

These excerpts indicate that the Senate was concerned with "providing security for aged people who are without adequate means of support" in enacting the old age assistance provisions of the Social Security Act.

The House of Representatives had a like concern in 1935. The report of the Committee on Ways and Means, prepared after extensive legislative hearings on the Social Security bill, contains the following illuminating statements of the purpose which the proposed legislation was to serve (74th Congress, First Session, House of Representatives Report No. 615, April 5, 1935):

"The need for legislation on the subject of social security is apparent at this time. On every hand the lack of such security is evidenced by human suffering, weakened morale, and increased public expenditures.

"This situation necessitates two complementary courses of action: We must relieve the existing distress and

should devise measures to reduce destitution and dependency in the future.

"Thus far in the depression, we have merely attempted to relieve existing distress, but the time has come for a more comprehensive and constructive attack on insecurity. The foundations of such a program are laid in the present bill." [p 3]

"Experience, both in this country and in other lands, has demonstrated that the best way to provide for old people who are dependent upon the public for support is through old-age assistance grants, more commonly called 'old-age pensions' • • • •." [p 4]

Like the Senate, the House focused on the alleviation of "human suffering" in enacting the Social Security Act.

In the original enactment of the Social Security Act, § 407 of 42 USC appeared as § 208 of Title II *in its present form.* Thus, in enacting 42 USC § 407, the 74th Congress was concerned with "old people who are dependent upon the public for support." Turning to the instant case, it is evident that the concern of Congress did not extend to decedent estates. Therefore, the concern of Congress does not extend to the estate of Jeanette Vary because said estate is not undergoing "human suffering," "distress" or "destitution." Being deceased, Jeanette Vary is no longer "dependent upon the public for support"; nor is her estate "dependent upon the public for support." Simply stated, the estate of Jeanette Vary does not fall within the scope of protection provided in 1935 by Congress in 42 USC § 407.

Said section underwent a minute change in the 1939 amendments to the Social Security Act. The First Session of the 76th Congress transposed the contents of 42 USC § 407 from § 208 of Title II to § 207 of Title II of the Social Security Act.

Under the heading "Detailed Explanation of the Bill," the Senate Committee on Finance in its Report covering the proposed 1939 amendments, made the following notation:

> "Section 207: This section is identical with section 208 of the Social Security Act which provides that a right to payment under this title shall not be transferable or assignable nor shall any moneys paid or payable be subject to execution or other legal process."

The above-quoted matter appears on p 53 of Senate Report No. 734. In the House of Representatives Report No. 728, the heading is identical, as is the notation of the House Committee on Ways and Means for proposed § 207, which appears on p 45.

The above-mentioned reports contain a joint "History of Legislation," which indicates that the 76th Congress, like the 74th Congress, was most concerned with "relieving existing needs" and "reducing future dependency" in enacting amendments to the Social Security Act. Said history appears on p 3 of both the Senate Report and the House Report and reads in pertinent part, as follows:

> "The Social Security Act became law on August 14, 1935, after many months of deliberation in Congress. The bill was passed by an overwhelming majority in both the House and the Senate, the votes being 372 to 33 and 77 to 6, respectively. The insurance provisions of the present act [substantially as reported out by this Committee] was upheld by the United States Supreme Court in the cases of *Steward Machine Co* v *Davis* [301 U. S. 548]; *Helvering* v *Davis* [301 U. S. 619]; and *Carmichael* v *Southern Coal Co.* [301 U. S. 495].
>
> "The enactment of the Social Security Act marked a

new era, the Federal Government accepting, for the first time, responsibility for providing a systematic program of protection against economic and social hazards. Though admittedly not perfect or all inclusive the Social Security Act did embrace the broadest program for social security ever launched at one time by any government.

"Relieving and reducing dependency.—The Social Security Act aimed to attack the problem of insecurity upon two fronts: First, by providing safeguards designed to reduce future dependency and second, by improving the methods of relieving existing needs. * * *" [Bracketed material supplied]

Since the wording of 42 USC § 407 remained identical in the 1939 amendments with the Social Security Act and since the congressional purpose remained fixed upon "relieving existing needs," what was said above regarding the impact of 42 USC § 407 in 1935 is equally applicable regarding the impact of 42 USC § 407 in 1939. In short, congressional intent in enacting and in amending the Social Security Act did not encompass decedent estates. Instead, the aim of Congress was directed toward protecting living individuals from "economic hazards."

The "Legislative History" contained on p 3 of both the Senate and House reports of the 76th Congress cites the landmark case of *Helvering* v *Davis*, 301 US 619; 57 S Ct 904; 81 L Ed 1314 (1937), as upholding the constitutionality of the Social Security Act. In that decision, this Court sanctioned the intent and purpose of Congress in enacting the Social Security Act as being within the Congress' constitutional powers. The Court stated the Congress' goal as follows, 301 US at 641-643:

"Congress did not improvise a judgment when it found

> that the award of old age benefits would be conducive to the general welfare. The President's Committee on Economic Security made an investigation and report, aided by a research staff of Government officers and employees, and by an Advisory Council and seven other advisory groups. Extensive hearings followed before the House Committee on Ways and Means, and the Senate Committee on Finance. A great mass of evidence was brought together supporting the policy which finds expression in the act. Among the relevant facts are these: The number of persons in the United States 65 years of age or over is increasing proportionately as well as absolutely. What is even more important, the *number of such persons unable to take care of themselves is growing at a threatening pace.* * * * *'Approximately three out of four persons 65 or over were probably dependent wholly or partially on others for support.'* " (Emphasis supplied, footnotes omitted).

The intent of Congress in enacting the Social Security Act was again relied on by this Court in its decision in the landmark case of *Social Security Board* v *Nierotko*, 327 US 358, 364; 66 S Ct 637; 90 L Ed 718 (1946), where the congressional intent was stated to be as follows:

> "The *purpose* of the Federal Old Age Benefits of the Social Security Act is to provide funds through contributions by employer and employee for *the decent support of elderly workmen* who have ceased to labor. * * *" [Emphasis supplied]

In yet another leading case, *United States* v *Silk*, 331 US 704, 710-711; 67 S Ct 1463; 91 L Ed 1757 (1947), the Court again relied on the aim and purpose of Congress in reaching its decision:

> "The Social Security Act of 1935 was the result of long consideration by the President and congress of the evil of the burdens that rest upon large numbers of our people because of the insecurities of modern life, particularly old age and unemployment. It was enacted in an effort to coordinate the forces of government and industry for solving the problems. The principal method adopted by Congress to advance its purposes was to provide for periodic payments in the nature of annuities to the elderly and compensation to workers during periods of unemployment. • • • *This relationship between the tax sections and the benefit sections emphasizes the underlying purpose of the legislation—the protection of its beneficiaries from some of the hardships of existence.* • • •" [Emphasis supplied]

From the foregoing decisions involving the Social Security Act, it is clear that this Court has placed great reliance on the purpose of this legislation in shaping its opinions. These opinions reflect the Congressional purpose of providing "for the decent support of elderly workmen" and for "the protection of its beneficiaries from some of the hardships of existence."

Turning to the instant case, it is evident that the estate of Jeanette Vary falls outside of the scope of congressional intent as evidenced by congressional committee reports and the landmark decisions of the nation's highest court. Both legislative history and judicial precedent reflect a concern for "support" of the aged. Obviously, Jeanette Vary ceased needing "support" when she ceased living. Jeanette Vary no longer needs the protection of a statute enacted to relieve individuals from the financial "hardships of existence." It is equally obvious that the decedent estate of Jeanette Vary has no need for protection from the "hardships of existence."

A number of circuits of the United States Court of Appeals

have been faced with legal issues involving disability payments and have often relied on the intent and purpose of Congress in formulating their decisions. Illustrative is the decision in *Butler* v *Fleming*, 288 F2d 591 (CA 5, 1961), where the court made the following statement of congressional purpose as guiding its holdings: "But the purpose of much social security legislation is to ameliorate some of these rigors that life imposes." Similarly, see *Hayes* v *Celebrezze*, 311 F2d 747 (CA 5, 1963).

Also illustrative, but not exhaustive, is the decision of *Delno* v *Celebrezze*, 347 F2d 159, 161 (CA 9, 1965), where the Court relied on congressional purpose in reaching its decision and made the following observations:

> "The general *purpose* of the old-age, survivor and disability insurance provisions of Title II of the Social Security Act *is to protect workers and their dependents from the risk of loss of income* due to the insured's old age, death, or disability." [Emphasis supplied]

The Third Circuit Court of Appeals in *Coy* v *Folsom*, 228 F2d 276 (CA 3, 1955), dealt with a decedent estate and old age benefits under the Social Security Act. In denying the estate recovery the court held that, "The benefits provided for the individual by the Act were personal in nature." The full text of the Court's holding reads as follows, 228 F2d at 279:

> "Old age benefits, as was pointed out in *Social Security Board* v *Nierotko*, 1946, 317 U.S. 358, 364, 66 S.Ct. 637, 90 L.Ed. 718, were designed to provide 'for the decent support of elderly workmen who have ceased to labor' and were periodic payments in the nature of annuities.
>
> "*The benefits provided for the individual by the Act*

> *were personal in nature. Such benefits cease in the month preceding the month in which he dies.* Section 202(a), 42 U.S.C.A. § 402(a). If the insured dies before reaching the age of 65, his estate has no right to any benefits even though he may be fully insured. Moreover, survivor's benefits and a lump-sum death benefit are provided by the Act. Section 202(d-i), 42 U.S.C.A. § 402(d-i): *Old-age benefits are clearly intended to provide funds currently necessary to enable the insured to live.*" [Emphasis supplied]

From the legislative history and judicial decisions it is apparent that the underlying principle of the Social Security system is to protect its living beneficiaries from the hardships of existence. 42 USC § 407 furthers this goal by exempting social security benefits of living recipients from legal process, but it is clear the Act's purposes cannot be effectuated as to deceased recipients and the statutory exemption is therefore inapplicable to accumulated social security benefits in a decedent's estate.

B.

PHILPOTT v ESSEX COUNTY WELFARE BOARD, 409 US 413 (1973), DOES NOT CONTROL THE DISPOSITION OF THIS CASE.

Petitioner relies heavily on *Philpott* v *Essex County Welfare Board, supra,* 409 US 413 (1973), in support of the argument that the social security benefits at issue retain their exempt status even after the death of the recipient, but such reliance is misplaced. *Philpott* is readily distinguishable from the instant circumstances and significant factual differences render that case inapposite here.

In *Philpott* a New Jersey welfare recipient had executed an agreement to reimburse the State out of subsequently-acquired

property. When an award of retroactive social security benefits was received by the welfare recipient, the State attempted to reach the money since the state welfare payments would have been reduced had the recipient been receiving the social security concurrently with the welfare benefits. New Jersey attempted to reach the current deposits of the living recipient, claiming that 42 USC § 407 contained an implied exemption for such circumstances. This Court rejected that contention, *Philpott*, *supra*, 409 US at 416-417, and said that even though the state's welfare payments would have been reduced if the social security benefits had been paid in concurrent monthly amounts, New Jersey was not in a preferred position as compared to any other creditor regarding the social security benefits which were exempt from legal process. In the instant case, however, the State of Michigan is not asserting a preferred position vis-a-vis other creditors on the basis of performance of a statutory duty to take care of the needy, and is not claiming an implied exemption from 42 USC § 407.

Here Michigan is seeking reimbursement for hospital expenses by attempting to reach accumulated social security benefits of a deceased recipient, and Respondent respectfully submits that such circumstances are far different from a claim for reimbursement of excess state welfare benefits from a living social security recipient's accumulated benefits. In *Philpott*, *supra*, the welfare recipient had no other funds, and the state was in fact "performing its statutory duty to take care of the needy." A person hospitalized in a state institution who is the current beneficiary of Social Security benefits is not a "needy person" within the same frame of reference as discussed in *Philpott*, because, in addition to Social Security benefits, he may own real estate, personal property and other assets.

Perhaps the most important distinguishing fact is that the case at bar represents an attempt to obtain reimbursement from the assets of a decedent's estate while in *Philpott*, *supra*, the

reimbursement was sought from a living person. It is submitted that where Social Security benefits have been accumulated in a bank account and the beneficiary has died, his or her personal right to this bank account is not assignable voluntarily or by operation of law to heirs or to next of kin. This personal right dies with the decedent. The bank account is no longer "impressed with any trust or with the beneficiary's inalienable right thereto." Instead, it is part of the decedent's gross estate being administered by a probate court.

The Social Security Administration supports this position, as seen in their letter to Mr. Sydney Goodman, State Commissioner of Revenue, which letter is dated January 21, 1974. This letter was made a part of the record before the Michigan Supreme Court, *In re Vary Estate, supra,* 401 Mich at 350-351. In the letter, Mr. Hugh F. McKenna, Director of the Social Security Administration, states:

> "However, it is the view of the Social Security Administration that § 207 of the Social Security Act and the *Philpott* case, relied upon by the Michigan court, apply to accrued social security benefits being conserved only by (or on behalf of) a *living* beneficiary. The Social Security Administration does not read § 207 to protect the benefits of a *deceased* worker from legal process and does not agree that the *Philpott* decision must *necessarily* be read to protect the estate of a *deceased* beneficiary from the claims of creditors. • • • It is true that in *Philpott* the United States Supreme Court used very broad language • • •, but it should be borne in mind that the court had before it a case in which benefits were being conserved for a *living* beneficiary. The clear purpose of § 207 was to assure that social security benefits are available for the support of the beneficiary on whose behalf they are paid. That purpose can no longer be served after the beneficiary has died." (Emphasis in original.)

In short, the monies now being held by the co-administrators of the estate of Jeanette Vary, Deceased, are no longer considered by the Social Security Administration to be exempt social security benefits, unlike the funds in *Philpott, supra,* which this Court said ". . . retained the quality of 'moneys' within the purview of § 407." *Philpott, supra,* 409 US at 416.

The distinction between the instant case and *Philpott, supra,* is that upon the death of Jeanette Vary, these funds lost the quality of "monies" which would be protected by the non-alienation language of § 407.

An attempt to impose the alienation limitations of the Social Security Act on decedent's assets was rejected in *Beers* v *Federal Security Administrator,* 172 F2d 34, 36 (CA 2, 1949), which held as follows:

> "Nor is the argument based on § 407 persuasive. This section, entitled 'Assignment,' reads, as follows:
>
> " 'The right of any person to any future payment under sections 401-409 of this title shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under said sections shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.'
>
> "This prohibition against transfer or assignment relates to the right to 'any future payment' of social security benefits; it does not, in our opinion, relate to checks issued for past installments. If it did, the payee of the check would be unable to negotiate it by endorsement, which concededly he can do. We think the section is intended to preclude a person entitled to benefits under sections 401 to 409 from transferring his right before, but

> not after, the Administrator has recognized it. *Hence checks issued to him pursuant to certification are freely transferable by him, and on his death pass by operation of law to his executor or administrator.*" [Emphasis supplied]

In the *Beers* case, *supra*, the recipient of Social Security payments at the time of his death was in possession of ten unendorsed and unnegotiated checks. The Court held specifically that issued Social Security checks pass on the death of the recipient to the administrator of his estate "by operation of law." Since the Social Security Act contains no provision providing for the passage of issued Social Security benefits to the administrator, the "operation of law" reference in *Beers, supra*, can be only to state statutes of descent and distribution. The Michigan Supreme Court so read the United States Court of Appeals' decision.

Petitioners contend (Petition, pp 14-15) that *Philpott, supra*, overruled *sub silentio* the *Beers* case, *supra*. Respondent submits however that *Philpott* did not address, either directly or indirectly, the question whether Social Security benefits pass to the estate of the decedent-recipient because *Philpott*, unlike *Beers*, did not involve a deceased recipient and a decedent estate. Because of this determinative factual difference, Petitioners' contention that *Philpott* overruled *Beers* is without merit and the *Beers* rationale is applicable to the instant case.

Petitioners contend that § 407 makes no distinction between living beneficiaries or their estates and go on to argue that the monies now on deposit have retained their exempt identity as Social Security funds which may not be reached under the broad impact of *Philpott, supra*. If this were the case, the Administrator of Social Security would arguably be entitled to make a formal demand upon the co-administrators of this estate for the return of these funds as they are no longer

needed for the care, support and maintenance of the beneficiary who is now deceased. This right of redemption on the part of the Social Security Administration no doubt would be exercised in every case where the identity of monies deposited in a bank account could be clearly established as Social Security benefits. In point of fact, such right has never been exercised because these monies clearly lose their separate identity upon the death of the beneficiary. Respondent contends that these monies are personal property, the same as any other bank account inventoried in the decedent estate and, as such, are subject to the claim of creditors and are not affected by the language of 42 USC § 407.

Courts in several states have reached this result and have declined to extend to heirs and legatees the protections personally enjoyed by recipients. For example, in *State* v *Monaco*, 81 NJ Super 448, 195 A2d 910 (1963), a New Jersey Court was faced with the question of whether the exemption contained in 38 USC § 3101 survived the death of the beneficiary of Veterans' benefits. The Court concluded that it did not, and that the veteran's pension lost its identity as exempt monies. The Court stated, 195 A2d at 912:

> "The decedent herein received considerable care and treatment from the State of New Jersey. A debt resulted therefrom. However, because of the moneys received by the decedent in the form of United States veterans' pension payments, protection against this obligation has been afforded. This Court concludes that these pension funds lose their identity as pension moneys on the death of the veteran and that the exemption of such moneys from the claims of creditors is thereupon lost."

See also, *In re Buxton's Estate*, 246 Wis 97, 16 NW2d 399 (1944); *State* v *Wendt*, 94 Ohio App 440, 116 NE2d 30 (1953).

CONCLUSION AND RELIEF SOUGHT

Respondent submits that the Petition presents no genuine Supremacy Clause issue, and because the Michigan statute apparently challenged by Petitioner has been repealed, no other issue of sufficient impact or importance is presented to warrant review by this Court. However, even if it is determined that this case presents an important issue concerning the interpretation of 42 USC § 407, Respondent submits that the Michigan Supreme Court's interpretation is clearly correct. Although 42 USC § 407 exempts social security benefits from legal process while the recipient is alive, that statute's protections are personal in nature and cease upon the death of the recipient. At that time accumulated social security benefits become a general, non-exempt asset, similar to any other asset in the estate and subject to the claims of creditors. This position gives full effect to the purposes underlying the Social Security Act in general and 42 USC § 407 in particular and is consistent with prior judicial decisions interpreting the Act.

For the foregoing reasons, it is respectfully submitted that the Petition for a writ of Certiorari should be denied.

Respectfully submitted,

FRANK J. KELLEY
Attorney General

Robert A. Derengoski
Solicitor General

Richard R. Roesch
E. David Brockman
Assistant Attorneys General

Dated: January 27, 1978